



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, LRE, OPR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on June 3, 2018 for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order for repairs - Section 32
3. An Order restricting the Landlord’s right of entry - Section 70; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant also applied on June 18, 2018 for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order for Repairs - Section 32; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on June 21, 2011 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Tenant states that its claim to cancel a notice to end tenancy contained in the application made June 3, 2018 was in relation to a notice from the Landlord in relation

to rents for March and April 2018. The Parties confirm that this matter was dealt with in a previous Decision dated May 28, 2018. The Tenant withdraws this application dated June 3, 2018 and I note that this application includes the claim to restrict the Landlord's right of entry and an order for repairs.

The Tenant states that its claims for repairs continued in the application made June 18, 2018 are in relation to a breaker box that has been an issue since a year ago.

Rule 2.3 of the residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other. As the claim for the repair is not related to the matter of rents paid or unpaid and as the time passed since the matter first arose indicates that there is no emergency with the breaker box, I dismiss this claim with leave to reapply should the tenancy continue.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an order of possession?

Is either Party entitled to recovery of its filing fee?

Background and Evidence

The tenancy under written agreement started on November 1, 2016. Rent of \$1,400.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$700.00 as a security deposit. On June 6, 2018 the Landlord served the Tenant with a 10 day notice for unpaid rent (the "Notice") by registered mail. The effective date set out on the Notice is June 22, 2018 and the Notice indicates that rent of \$1,300.00 due June 1, 2018 was not paid.

The Tenant states that in error the rent for June 2018 was sent by e-transfer to the Landlord's son on June 3 or 4, 2018. The Tenant states that this error was not discovered until July 12, 2018. The Tenant states that although he received the Notice

on June 11, 2018 at this time he assumed that the rent had been paid correctly and because of the tension and animosity between himself and the Landlord's sons, he did not contact the Landlord to inform him that the Notice was not valid as the rent was paid. The Tenant states that he discovered the rent had been sent to the wrong recipient when the Landlord's son confronted the Tenant on July 12, 2018 about not having paid the rent. The Tenant states that on this date the Tenant cancelled the June 3 or 4 e-transfer and sent the June and July 2018 rent by e-transfer to the correct recipient. The Tenant has not provided any documentary evidence of the e-transfers made June 3 or 4, 2018.

The Landlord states that they received payment for June and July 2018 as stated by the Tenant on July 12, 2018 and that they issued the Tenant with receipts for each month noted "for use and occupancy only". The Parties agree that no rent has been paid for August 2018 as of this hearing date. The Landlord states that no e-transfer was received on June 3 or 4 by the Landlord's son. The Landlord states that the Tenant's evidence of having sent the rent to the Landlord's son is not credible in the face of the Tenant's evidence that the son was upset on July 12, 2018 about not having received rent. The Landlord states that the Tenant's evidence does not add up.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The Tenant's evidence of having sent an e-transfer payment of rent on June 3 or 4, 2018 and of not knowing of the error in the recipient until July 12, 2018 does not hold a ring of truth in light of the Tenant's evidence that the same recipient challenged the Tenant for having not paid rent. For this reason and as the Tenant did not provide any supporting evidence of the e-transfer in early June 2018, I find on a balance of probabilities that the Tenant did not pay the rent within the time

allowed after receipt of the Notice. As a result I find that the Notice is valid. The Tenant's claims to cancel the Notice and for recovery of the filing fee is dismissed.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form. As the Notice has been found valid for unpaid rent and as the Notice complies in form and content I find that the Landlord is entitled to an order of possession. This Order will be effective 2 days after service on the Tenant.

Based on the undisputed evidence that the rent has been paid for June and July 2018 I dismiss the Landlord's claim for this unpaid rent. As no rent has been paid for August 2018 but considering that the tenancy will shortly end I find that the Landlord is only entitled to half of the rent for August in the amount of **\$700.00**. As the Landlord's application has been successful I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$800.00**. Deducting the security deposit plus zero interest of **\$700.00** leaves **\$100.00** owed by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the Landlord retain the **deposit** and interest of \$700.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act

for the balance due of **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 08, 2018

Residential Tenancy Branch