



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNR OLC ERP PSF LRE

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46 (the 10 Day Notice);
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to change the locks and/or to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide testimony and present evidence.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began approximately one year ago with a monthly rent of \$900.00 payable on the 1st day of each month. The rental unit is a large house with approximately 15 rooms and the tenant is renting a single room.

The parties agreed that the tenant received the 10 Day Notice on August 20, 2018.

The outstanding rent amount as per the 10 Day Notice was \$2700.00 which was due on August 1, 2018. The landlord testified that this was unpaid rent for the months of May, June and August 2018. The landlord testified that the tenant did not pay the full amount of the arrears indicated on the 10 Day Notice within five days of being served and that the full amount is still outstanding and the tenant has not paid any rent since.

The tenant testified that she has paid the rent for May, June and August 2018 in full. The tenant testified that she submitted some receipts as proof of payment but that she could not find all the receipts. The tenant testified that she found more receipts the day before the hearing but has not submitted them as evidence. The tenant acknowledged September 2018 rent has not been paid as she argues the landlord does not own the house and is not the true landlord. The tenant submits the landlord is subleasing the property without permission from the original landlord.

The tenant's application to cancel the 10 Day Notice was filed on August 20, 2018 within the time period permitted under the Act.

Analysis

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application must be dismissed as the tenant has failed to sufficiently prove that she paid the outstanding rent as claimed by the landlord. The tenant only

submitted two receipts which are not for the period in question or for the full amount of rent payable under the tenancy. The tenant said she found other receipts but has failed to submit them as evidence. I accept the landlord's testimony that the rent has not been paid. The tenant's argument that the landlord has sublet the rental unit without permission from the original landlord is not relevant to this hearing as a tenant may sublet a rental unit making them the landlord of the sublet tenant. Whether the landlord had permission to sublet is an issue between the landlord and the original landlord.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: October 04, 2018

Residential Tenancy Branch