



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR LRE OLC RR RP
Landlord: OPR MNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on October 12, 2018.

Although there were two Tenants listed on the tenancy agreement, only one Tenant signed the agreement. As such, this decision will address this Tenant only, and any orders will be issued against the named Tenant.

The Landlord was present at the hearing as was his agent. The Tenant was not present but was represented by her agent. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord stated that they received the Tenant's application package and stated that although they didn't receive the Tenant's documentary evidence, they were willing to proceed with the application anyways and allow this evidence to be introduced. The Tenant provided a copy of her evidence (7 pages) to the Residential Tenancy Branch on August 28, 2018, at the time she filed her application. Since the Landlord did not take issue with not having the Tenant's evidence and wanted to proceed, and since I have the evidence from the Tenant before me, I will admit and consider this evidence in this hearing.

The Tenant's agent stated that the Tenant received the Landlord's application package and did not take issue with the service of this document. However, the Tenant's agent was unclear about what was included in this package, as she was not the one who received it. The Tenant's agent was also unclear about when the Tenant received the 10 Day Notice. There appeared to be a disconnect between the Tenant and her agent with respect to what was served, and when. In contrast to this, the Landlord provided a more compelling account of how the documents were served, and what was included in the package. The Landlord and his agent both testified that the Tenant was served with the notice of hearing and evidence all in one package, which included a copy of the bounced cheques and the tenancy agreement. Based on a balance of probabilities, I find it more likely than not that the Landlord included a copy of their evidence

when they served the notice of hearing to the Tenant. I find the Tenant was sufficiently served with the Landlord's application package, notice of hearing, and evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Both parties applied for multiple remedies under the *Residential Tenancy Act* (the "Act"), a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in both applications deal with whether or not the tenancy is ending due to unpaid rent/utilities and whether or not the Landlord is entitled to a monetary order for the amount identified on the 10-Day Notice. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Tenant's application, except their application to cancel the 10-Day Notice. Further, since the Landlord's application pertains to the issue of unpaid rent, I will consider their request for an order of possession and a monetary order.

Issues to be Decided

- Is the tenant entitled to have the landlord's 10 Day Notice to End Tenancy cancelled?
 - If not, is the landlord entitled to an Order of Possession
- Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

Both parties provided testimony during the hearing with regards two different 10 Day Notices (for Non-payment of rent). However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether or not the tenancy will continue or end, and what amount of money is owed in unpaid rent. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings. Given that my decision hinges on the first 10 Day Notice, I will focus on this evidence.

The tenancy agreement provided into evidence shows that the tenancy started on August 8, 2018, and that monthly rent is \$3,200.00 and is due on the 8th day of each month. The tenancy agreement specifies that the Tenants were to pay a security deposit in the amount of \$1,600.00.

At the time the Tenant signed the rental agreement on August 8, 2018, she provided a \$3,200.00 cheque for the first month's rent, as well as a \$1,600.00 cheque for the security deposit. The Landlord issued a receipt to the Tenant for these items. The Landlord stated that he tried to cash the cheques, and they bounced. The Landlord provided copies of the bounced cheques, stamped by the bank. The Landlord stated that he went to speak to the Tenant about the cheques and at this point, the Tenant stated that there were issues with the rental unit and that she wouldn't be paying. The Landlord stated that the Tenant still lives in the rental unit, and has not paid anything, or given any more cheques to the Landlord since the first set she gave on August 8, 2018. So, the Tenant now owes 3 months in rent (August, September, and October rent).

The Tenant's agent stated that the rent has been paid, and she has the receipt to prove it from August 8, 2018. The Tenant's agent was asked if she had any evidence to show that the rent has been paid or that the cheques cleared, and she stated she did not have any proof. The Tenant's agent was unable to provide any evidence, beyond the receipt issued on August 8, 2018, to show that any rent has been paid since the Tenants moved in.

The Tenant's agent stated that she is not sure when the Tenant received the 10 day Notice. The Landlord stated that he originally issued a 10 Day Notice on August 19, 2018, by posting a copy to the door of the rental unit for unpaid rent in the amount of \$4,800.00, which was due on August 8, 2018. A proof of service document was provided and a third party witnessed the Landlord post this 10 Day Notice to the door of the rental unit on August 19, 2018. The Landlord issued this Notice based on the unpaid rent and security deposit. However, he realized his mistake and now realizes that the amount should have been for \$3,200.00 (rent only, and not including the bounced cheque for the deposit).

Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Although there were two 10 Day Notices issued to the Tenant, I will focus on the first 10 Day Notice, issued by the Landlord on August 19, 2018.

I have looked at and considered the 10 Day Notice, issued on August 19, 2018, and pursuant to section 68 of the Act, I find it is reasonable to amend this notice to reflect the correct amount of rent that was due at the time the notice was issued, rather than the amount of unpaid rent plus unpaid security deposit. I amend the amount due on this 10 Day Notice from \$4,800.00 to

\$3,200.00, as the Tenant ought to have known the amount that was overdue, given this monthly rent amount was agreed upon in the tenancy agreement.

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

Although the Tenant disputed the Notice on time, the evidence before me indicates that the Tenant has failed to pay for any rent since she moved in. The Tenant's agent stated that she has paid. However, I note she has no evidence to support this. I acknowledge that the Landlord gave the Tenant a receipt for the initial cheques on August 8, 2018. However, I note the Landlord has provided evidence that these cheques bounced. I find it more likely than not that the Tenant failed to pay rent for August, September, or October 2018. There is a lack of evidence from the Tenant to show that any payments were made. Given this, I dismiss the Tenant's application to cancel the Notice.

As the Tenant's Application is dismissed, I must now consider if the Landlord is entitled to an Order of Possession pursuant to sections 55 of the *Act*. Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord 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.

I find that the 10 Day Notice issued by the Landlord meets the requirements for form and content and the Landlord is entitled to an order of possession. The Order of Possession will be effective 2 days after it is served on the Tenant.

With respect to the Landlord's application to recover unpaid rent, I find that there is sufficient evidence from the Landlord to show that the Tenant has failed to pay any rent since moving in. I find the Tenant owes \$3,200.00 x 3 months, totalling \$9,600.00, as of the time of this hearing.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I also order the Tenant to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution.

In total, I award issue a monetary order against the Tenant in the amount of \$9,700.00.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$9,700.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: October 15, 2018

Residential Tenancy Branch