



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNDCT, RP

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to cancel a Notice to End Tenancy for Unpaid Rent; for a monetary Order for money owed or compensation for damage or loss; and for an Order requiring the Landlord to make repairs.

The Tenant stated that on, or about, August 28, 2018 the Application for Dispute Resolution, the Notice of Hearing, and 40 pages of evidence submitted with the Application were sent to the Landlord, via email. As the Landlord acknowledged receipt of these documents, I find that they were sufficiently served to the Landlord and the evidence was accepted as evidence for these proceedings.

On October 05, 2018 the Landlord submitted 45 pages of evidence to the Residential Tenancy Branch and on October 06, 2018 the Landlord submitted another 1 page of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the female Tenant on October 06, 2018. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is directly relevant to my decision.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenants have

identified several issues in dispute on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

The Tenants agreed that the most urgent issue in dispute is possession of the rental unit and I will, therefore, only consider the Tenants' application to set aside a Ten Day Notice to End Tenancy for Unpaid Rent or utilities.

The Tenants' application for a monetary Order and for repairs are dismissed, with leave to re-apply.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in 2013 and that monthly rent is currently \$800.00.

The Landlord and the Tenant agree that when this tenancy began rent was due by the 1st day of each month.

The Landlord stated that the parties subsequently agreed that \$400.00 in rent could be paid on the 1st and \$400.00 in rent could be paid on the 15th day of each month. He stated that they subsequently agreed that \$400.00 in rent could be paid on the 15th of the month and \$400.00 in rent could be paid by the last day of the month.

The Tenant stated that the parties subsequently agreed that \$400.00 in rent would be paid every two weeks, on that date her husband is paid. She stated that rent of \$400.00 was due on August 03, 2018 and rent of \$400.00 was due on August 17, 2018.

The Landlord stated that the parties verbally agreed to change the due date of the rent. The Tenant contends that the agreement to pay rent every second week was reached in the text message labelled B3. In this message the Tenant offered to pay \$400.00 every two weeks until they were caught up with the overdue rent.

The Landlord and the Tenant agreed that the female Tenant was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent on August 23, 2018. The parties agreed that this Notice declared that the Tenants must vacate the rental unit by September 04, 2018.

The Landlord stated that when this Notice to End Tenancy was served to the Tenants they owed rent of \$2,600.00 and that no rent has been paid since that date.

The Tenant stated that when this Notice to End Tenancy was served to the Tenants they owed rent of \$800.00 and that no rent has been paid since that date. The Tenant subsequently stated that on August 23, 2018 they had a rent credit of \$2,400.00. The Tenant s contend that they have been paying \$400.00 every two weeks since 2014 and have, therefore, overpaid their rent by \$800.00 in 2014, 2015, 2016, and 2017, leaving them with a credit of \$2,400.00.

The Landlord stated that the Tenants have not been paying \$400.00 every two weeks since 2014 and that they do not have a rent credit of \$2,400.00. He stated that he believes the rent was in arrears on December 31, 2017 but he is not certain how much was owed at that time as he did not bring his bank records from any period prior to 2018.

The Landlord submitted a list of payments made for rent in 2018, labelled C2. The Landlord and the Tenant agree that these payments accurately reflect the rent payments that have been made for 2018.

Analysis

I find that the Tenants have submitted insufficient evidence to establish that they had a rent credit of \$2,400.00 on December 31, 2017. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a record of payments, that corroborates the Tenant's testimony that the Tenants paid \$400.00 every two weeks since 2014 or that refutes the Landlord's testimony that the Tenants have not paid \$400.00 every two weeks since 2014 and that they did not have a rent credit of any amount on December 31, 2017.

I find that the Tenant's testimony that the Tenants paid \$400.00 every two weeks since 2014 is not corroborated by the text messages submitted in evidence.

In the text message dated January 23, 2015 the Tenants offer to pay \$400.00 every two weeks. This suggests that the Tenants were not paying this amount prior to that date and causes me to conclude that the Tenants were not paying \$400.00 every two weeks in 2014.

In the text message dated May 12, 2017 the Tenants declared that they sent \$550.00 for rent and will keep trying to pay more until they are caught up with the rent. This refutes the Tenant's testimony that they paid \$400.00 every two weeks.

On the basis of the undisputed evidence that the document C2 accurately reflects the list of rent payments made in 2018, I find that the Tenants paid \$3,850.00 in rent for the period between January 01, 2018 and August 31, 2018. As the Tenants were required to pay \$6,400.00 in rent for that period, I find that the Tenants owe \$2,550.00 in rent for the period between January 01, 2018 and August 31, 2018.

I find that regardless of when rent was due for August of 2018, the Tenants owed at least \$1,750.00 in rent when the Ten Day Notice to End Tenancy was served to them on August 23, 2018.

Section 46(1) of the *Act* authorizes a landlord to end a tenancy if rent is unpaid on any day after the rent is due by serving the tenant with a Ten Day Notice to End Tenancy for Unpaid Rent. As the Tenants were served with a Ten Day Notice to End Tenancy for Unpaid Rent was served to the Tenants on August 23, 2018 and rent was overdue on that date, I find that the Landlord had the right to end this tenancy pursuant to section 46(1) of the *Act*. I therefore dismiss the Tenants' application to set aside this Notice to End Tenancy.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Conclusion

I grant the Landlord an Order of Possession that is effective on **October 31, 2018**. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, 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: October 15, 2018

Residential Tenancy Branch