



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, MT, FFT, OPRM-DR

Introduction

This hearing dealt with cross applications filed by the parties. On July 12, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking More Time to cancel the Notice pursuant to Section 66 of the *Act*, seeking an Emergency Repair Order pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On July 23, 2018, the Landlords applied for a Dispute Resolution proceeding seeking an Order of Possession for Unpaid Rent and Utilities pursuant to Section 46 of the *Act* and seeking a Monetary Order for Unpaid Rent and Utilities pursuant to Section 67 of the *Act*.

The Landlords attended at the start of the hearing and the Tenant attended eight minutes after the hearing commenced. All parties provided a solemn affirmation.

The Tenant advised that he served the Landlords with the Notice of Hearing package by registered mail but he was not sure of the date; however, the Landlords advised that they received this package and were prepared to respond to it. Based on this testimony, I am satisfied that the Landlords were served with the Notice of Hearing package.

The Landlords advised that they did not know that they were required to serve the Tenant with the Notice of Hearing package or evidence. As this package was not served to the Tenant in accordance with Section 89 of the *Act*, the Landlords’ Application is

dismissed with leave to re-apply. As well, their evidence was not considered when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to an emergency repair order?
- Is the Tenant entitled to have the Notice cancelled?
- Is the Tenant entitled to be granted more time to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

All parties agreed that the Landlords purchased the rental unit in July 2016 and they assumed the Tenant and the existing tenancy agreement. Rent was established at \$800.00 per month, due on the first day of each month. The Tenant paid a security deposit of \$400.00 and a pet damage deposit of \$400.00 that transferred over to the Landlords.

The Landlords submitted that the Tenant had not paid April, May, June, or July 2018 rent in full. The Landlords stated that they served the Notice to the Tenant by posting it on the door on July 3, 2018 which indicated that \$2,800.00 was outstanding on July 1, 2018. The Tenant confirmed that he received the Notice on July 6, 2018. The Notice indicated that the effective end date of the Notice was July 12, 2018.

The Tenant stated that the reason he did not dispute the Notice on time was because he worked out of town and did not have access to cell service or the internet. He also advised that he did not have anyone else that could make the Application for him. He submitted that the reason he did not pay the rent is because he requested that the Landlords take care of a mould issue in the house but the Landlords would not fix the problem. The Tenant confirmed that he did not pay the rent that was owed either and that he has already vacated the rental unit. The Tenant subsequently stated at 11:20 AM that he was no longer going to participate in the Dispute Resolution proceeding and he then removed himself from the hearing by disconnecting from the phone system.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlords' 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 33 of the *Act* outlines the Landlords' and Tenant's duties when an emergency repair is required. I have emphasized the applicable subsections with respect to this situation.

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are
(a) urgent,
(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and...

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

(a) emergency repairs are needed;
(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Other than simply stating that there may be mould in the rental unit, the Tenant has not provided any evidence to substantiate that the “emergency repairs” sought constituted a repair that is urgent or necessary for the health or safety of anyone or for the preservation or use of the rental unit. Furthermore, there is no evidence before me that the Tenant followed the steps in subsection (3) to have this issue dealt with or that he undertook any repairs himself. As such, I do not find that the Tenant was entitled to deduct any amount from rent, and I dismiss this portion of his Application.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on July 6, 2018. According to Section 46(4) of the *Act*, the Tenant has 5 days pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that “*If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.*”

As the fifth day fell on July 11, 2018, the Tenant must have made his Application by this day at the latest. However, the undisputed evidence is that the Tenant made his Application on July 12, 2018. As the Tenant was late in making this Application, he requested more time to do so. Pursuant to Section 66 of the *Act*, I have the authority to extend the time frame to dispute the Notice “only in exceptional circumstances.” When the Tenant was questioned if there were any exceptional circumstances that prevented him from disputing the Notice within the required time frame, his reasoning was that he worked out of town and did not have access to cell service or the internet. As well, he stated that he did not have anyone else that could make the Application for him.

Based on Section 66 of the *Act*, I have the authority to determine whether to consider if the Tenant’s testimony and reasons would constitute exceptional circumstances. However, I do not find that any of the Tenant’s reasons for not disputing the Notice on time to satisfactorily be considered exceptional. There was insufficient evidence that the Tenant had significant issues or exceptional circumstances that prevented him from disputing the Notice on time. As such, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenant being deemed to have received the Notice. Moreover, the Tenant did not establish that he had a valid reason for withholding the rent pursuant to the *Act*. In addition, the undisputed evidence is that the Tenant did not dispute the Notice within the required timeframe nor did he have a valid reason for not doing so on time.

As the Landlord’s Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

As the Tenant was unsuccessful in this application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenant’s Application and I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. This order must be

served on the Tenant by the Landlords. Should the Tenant 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: September 11, 2018

Residential Tenancy Branch