



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LAT, RR, MNDCT, LRE

Introduction

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

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

The landlords and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Landlord C.S. (the landlord) was the primary speaker for the landlords.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) which was sent to them by registered mail on or about July 24, 2018. In accordance with section 88 of the *Act*, I find the landlord was duly served with the Application.

The tenant stated that they provided their evidence to the Residential Tenancy Branch (RTB) but did not provide it to the landlords.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence that is intended to be relied on at the hearing must be received

by the respondent not less than 14 days before the hearing. I find that the tenant did not serve the landlords with their evidence and that the landlords may be prejudiced by this as they did not have a chance to respond to the tenant's evidence. For this reason the tenant's evidence is not accepted for consideration.

The tenant acknowledged receipt of the landlords' evidence which was sent to them by registered mail and received on or about September 03, 2018. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlords' evidence.

The tenant confirmed that they received the 10 Day Notice on the same date that it was posted to their door on July 19, 2018. In accordance with section 88 of the *Act*, I find the tenant was duly served with 10 Day Notice on July 19, 2018.

Preliminary Matter

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

Issue(s) to be Decided

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

Background and Evidence

Written evidence was provided that this tenancy began on July 01, 2017, with a monthly rent of \$800.00, due on the first day of each month. The landlord and tenant agreed that no security deposit was paid for the rental unit.

A copy of the signed 10 Day Notice, dated July 19, 2018, and identifying \$800.00 in unpaid rent and \$112.00 in unpaid utilities with an effective date of July 31, 2018, was included in the landlords' evidence.

The landlord testified that the tenant has not paid any rent since paying \$600.00 in May 2018. The landlord testified that they are seeking an Order of Possession for unpaid rent.

The tenant submitted that there was an agreement in place with the landlord to improve the condition of the rental unit. The tenant testified that they completed repairs and maintenance but that there was a lack of recognition from the landlord for the tenant's efforts and that they felt betrayed by this. The tenant stated that they feel the issues are deeper than unpaid rent. The tenant submitted that there were fraudulent statements made by the landlord and which resulted in social assistance being cut off from the tenant and is the reason why the tenant has not been able to pay the monthly rent. The tenant stated that they feel the issues at hand are no longer civil issues and that they are criminal. The tenant testified that they are a single father who is not out to hurt anyone.

In response to the tenant, the landlord confirmed that an agreement was in place regarding the tenant paying the agreed upon rent for the rental unit and keeping the rental unit in satisfactory condition in preparation to sell it eventually. The landlord stated that the tenant would become volatile and threatening when the landlord had to pursue late rent from the tenant and that the tenant's behaviour increased in volatility when the landlord officially put the rental unit up for sale.

Analysis

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.

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 as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. As I have found the 10 Day Notice was duly served to the tenant on July 19, 2018, I find the tenant had until July 29, 2018, to dispute the 10 Day Notice or to pay the full amount of the arrears.

I find that the tenant submitted their Application on July 23, 2018, within the five day time limit permitted under section 46 (4) the Act; however, I find the tenant did not provide

any evidence that they paid the monthly rent within the five days allowed by the *Act* or were legally entitled to withhold any rent.

For the above reasons, the tenant's Application to cancel the 10 Day Notice is dismissed, without leave to reapply

Section 55(1) of the *Act* reads as follows:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I find that the 10 Day Notice complies with section 52 of the *Act* and based on my decision to dismiss the tenant's Application, I find that the landlords are entitled to a two (2) day Order of Possession in accordance with section 55(1) of the *Act*.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant or any occupant on the premises 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