



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, MNDCT, OT, RP

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”), an order for the Landlord to make emergency repairs, a Monetary Order for money owed or damage or loss under the Act, regulation, or tenancy agreement, an order for the Landlord to make repairs to the rental unit that have been requested but not completed, and other unspecified remedies.

I note that section 55 of the Act requires that when a tenant submits an Application 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 is compliant with section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant’s legal advocate (the “Advocate”), the Landlord, and the Landlord’s spouse, who is also a co-owner of the property. All parties provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. None of the parties raised concerns about the service of the Application, the Notice of Hearing, or the documentary evidence before me for consideration.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail address provided in the hearing.

Preliminary Matters

Preliminary Matter #1

In the Application the Tenant sought multiple remedies under multiple sections of the *Act*, a number of which were unrelated 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.

As the Tenant applied to cancel a One Month Notice for repeated late payment of rent, I find that the priority claim relates to whether the tenancy will continue or end. As the other claims by the Tenant are unrelated to the reason for which One Month Notice was served, I therefore exercise my discretion to dismiss the Tenant's remaining claims for an order for the Landlord to make emergency repairs, a Monetary Order for money owed or damage or loss under the *Act*, regulation, or tenancy agreement, an order for the Landlord to make repairs to the rental unit that have been requested but not completed, and other unspecified remedies with leave to reapply.

Preliminary Matter #2

Although the Tenant and the Advocate proposed a settlement agreement in order to continue the tenancy, ultimately a settlement agreement could not be reached between the parties. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties agreed that a verbal tenancy agreement exists for a month-to-month tenancy which began November 3, 2016, and that rent in the amount of \$1,150.00 is due on the first day of each month. The Parties also agreed that a \$600.00 damage deposit was paid by the Tenant, which the Landlord still holds.

The Landlord stated that the Tenant has been repeatedly late paying rent, and as a result, a One Month Notice was personally served on the Tenant on July 11, 2018. In the hearing the Tenant confirmed receipt of the One Month Notice on July 11, 2018. The One Month Notice in the documentary Evidence before me, dated July 11, 2018, has an effective vacancy date of August 11, 2018, and states that the reason for ending the tenancy is because the tenant is repeatedly late paying rent. In the details of cause section the Landlord further stated that rent was short in February, March, April, and May of 2018 and provided information about the amounts of rent paid by the Tenant for each of those months.

Although the Tenant provided reasons for her failure to pay the rent in full each of the above noted months, such as lack of funds due to expenses incurred by her as the result of stove and furnace issues and a rodent infestation, ultimately the parties were in agreement that the Tenant made the following rent payments by e-transfer:

- \$1,030.00 for February, 2018;
- \$1,030.00 for March, 2018;
- \$1,065.00 for April, 2018; and
- \$1,000.00 for May, 2018.

While the Landlord alleged that the above noted rent payments were made after the first day of the month, the Landlord did not provide any documentary evidence in support of this testimony and the Tenant denied this allegation stating that all of the above noted payments were made on or before the first day of the month.

The parties were in agreement that full rent has been paid for June to September, 2018, and the Advocate argued that the Landlord re-established the tenancy by accepting rent for these months without giving the Tenant receipts for use and occupancy only. The Landlord denied that the tenancy was re-established when rent was accepted as the reason the tenancy continued was because the Tenant disputed the notice. When asked, the Tenant also acknowledged that she is not ordinarily provided with rent receipts. Although the Tenant stated that the Landlord agreed to cancel the One Month Notice if the Tenant paid the outstanding balance owed for February – May, the

Landlord denied this allegation. In any event, the Tenant acknowledged that \$75.00 in rent remains outstanding for February-May of 2018. The Landlord did not dispute this statement.

The Advocate pointed out that a previous Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) has already been dealt with between the parties and questioned why the Landlord has now served this One Month Notice without any previous warnings to the Tenant. The Tenant and the Advocate also stated that the Landlord’s spouse, who is a co-owner of the property, had an agreement with the Tenant that she could pay her rent late if necessary, however, the Landlord’s spouse denied that any such agreement exists. Although the Advocate and the Tenant stated that text messages showing this agreement exist, were not submitted for my consideration and the Agent stated that the Tenant was unable to submit them as she broke her phone.

The Advocate also argued that despite the provisions of section 33 of the *Act*, the rodent infestation in the Tenant’s rental unit is so severe as to constitute an emergency repair. Despite the foregoing the Tenant acknowledged that she has not paid for any repairs in relation to this rodent infestation, made any other repairs to the rental unit that might qualify as emergency repairs pursuant to section 33 of the *Act*, or followed the requirements of section 33 of the *Act* with regards to completing any repairs and seeking reimbursement. Further to this, the Tenant acknowledged that she does not have any outstanding orders from the Branch allowing her to deduct any portion of rent.

Analysis

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, regulation, or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. As a result, I find that the Tenant was obligated to pay rent in the amount of \$1,150.00 on time and in full each month, unless she had a right under the *Act* to deduct all or a portion of the rent.

Although the Advocate argued that the Tenant was not obligated to pay rent in full due to the rodent infestation, section 33 of the *Act* sets out very specific requirements, which I have no authority to alter, ignore, or contravene, for what constitutes an emergency repair and when a Tenant may deduct the cost of emergency repairs from rent. Not only do I find that a rodent infestation does not qualify as an emergency repair pursuant to section 33 of the *Act*, but as the Tenant acknowledged that she neither completed any

repairs in relation to the rodent infestation or any other issues nor sought compensation from the Landlord in relation to these repairs, I find that she did not have authority under section 33 of the *Act* to withhold any portion of the rent.

The Advocate argued that the Landlord re-established the tenancy by accepting rent after the issuance of the One Month Notice and therefore the One Month Notice should be cancelled. I do not agree. Although the Advocate stated that the Tenant was not provided with receipts for use and occupancy only, the Tenant acknowledged that she does not ordinarily receive rent receipts. As a result, I do not find the lack of rent receipts for use and occupancy only, in and of itself, demonstrates that the tenancy was re-established. Instead, I turn my mind to the intentions of the parties in relation to the payment and acceptance of rent after the One Month Notice was served. Although the Tenant argued that she understood that the acceptance of rent meant that the One Month Notice was not valid, she did not provide any evidence to substantiate that any such agreement was reached and she none the less filed for dispute of the notice and continued with the dispute resolution process. Both parties also provided evidence for consideration in this matter and appeared at the hearing. As a result, I find that both parties had, at all material times, intentions to proceed with the dispute resolution process. Further to this, the only reason rent was required for the subsequent months is because the Tenant disputed the One Month Notice and I do not find it reasonable for the Tenant to then argue that rent paid for the period between the date of her Application and the date of the hearing should therefore constitute re-establishment of the tenancy.

While the Tenant and the Landlord disagreed about whether an agreement was reached whereby the One Month Notice would be cancelled if the Tenant paid the outstanding balance owed for February-May of 2018, ultimately the Tenant agreed that \$75.00 for this period remains unpaid. As a result, I find that any agreement which might have been reached between the parties regarding the cancellation of the One Month Notice would therefore have been invalid. As a result, I decline to cancel the One Month Notice as a result of any such agreement, should it have existed.

I also give no weight to the Advocates argument that the Tenant should have been provided advance notice that her history of late rent payment could result in termination of the tenancy. As stated above, section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement. Further to this, section 47(1)(b) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

In the hearing the parties agreed that the Tenant paid \$600.00 as a security deposit at the start of the tenancy and that rent is \$1,150.00 per month. Section 19 of the *Act* states that a landlord must not require or accept a security deposit that is greater than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement, which in this case, would be \$575.00. Section 19 also states that if a landlord accepts a security deposit that is greater than the amount permitted, the tenant may deduct the overpayment from the rent. As a result, I find that the Tenant overpaid the security deposit by \$25.00 and was there entitled to deduct \$25.00 from the rent in recovery of this overpayment.

As stated above, section 47(1)(b) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent and Residential Tenancy Branch Policy Guideline (the "Policy Guideline") #38 defines late payment of rent as at least three late payments.

Despite the fact that the Tenant was entitled to deduct \$25.00 in rent, I find that the Tenant was still short between \$95.00 and \$150.00 in rent each month between February and May of 2018. As a result, I find that the Tenant is considered to have paid her rent late on at least four occasions in the last 12 months and is therefore considered to have been repeatedly late in paying her rent, pursuant to Policy Guideline #38. Based on the above, I find that the Landlord had the grounds to serve the One Month Notice pursuant to section 47(1)(b) of the *Act* and the Tenant's Application seeking cancellation of the One Month Notice is therefore dismissed without leave to reapply.

As the One Month Notice in the documentary evidence before me is signed and dated by the Landlord, gives the address for the rental unit, states the effective date of the notice and the reason for ending the tenancy, and is in the approved form, I find that it complies with section 52 of the *Act*. As a result, the Landlord is therefore entitled to an Order of Possession pursuant to section 55 of the *Act*. Although it is apparent from the testimony provided in the hearing and my findings above that some amount of rent, likely \$50.00, remains outstanding for February – May of 2018, both parties agreed that full rent has been paid for the current month. Further to this, the issue before me for consideration is whether the Tenant has repeatedly paid rent late, not whether the tenant currently owes any outstanding rent. Based on the above and as the effective date of the One Month Notice has passed, I order that the Order of Possession will be effective at 1:00 P.M. on September 30, 2018.

Conclusion

The Tenant's Application seeking cancellation of the One Month Notice is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **1:00 P.M. on September 30, 2018**, after service of this Order on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in 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: September 19, 2018

Residential Tenancy Branch