



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNR LRE MNDC OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing, by teleconference, was held on September 13, 2018. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "*Act*").

Both parties attended the hearing and provided testimony. The Landlord confirmed receipt of the Tenant's application package, amendment, and evidence. The Tenant confirmed receipt of the Landlord's evidence. I am satisfied both parties were sufficiently served with the application, amendment, and evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, some 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 before me deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Tenant's application with the exception of the following grounds:

- to cancel a 1 Month Notice to End Tenancy for Cause (the 1-Month Notice).
- to cancel a 10-Day Notice to End Tenancy for Cause (the 10-Day Notice).

Issue(s) to be Decided

- Is the Tenant entitled to have the 10 Day and the 1 Month Notices cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties provided testimony during the hearing with regards two different Notices (10-Day Notice for Non-payment of rent) as well as issues surrounding the 1 Month Notice for Cause (repeated late 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. 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 10 Day Notice from August 2018, I will focus on this evidence.

The parties agree that monthly rent is \$1,163.00 and is due on the first of the month. The Landlord holds a security deposit in the amount of \$550.00. The Tenant provided a copy of a previous arbitration decision, where similar issues were discussed. The Arbitrator at that hearing in early July 2018, ordered the Tenant to pay by either cheque or money order to avoid issues that had arisen from paying rent in cash. The Arbitrator ordered that the Tenant pay in this manner, as of August 1, 2018.

The Landlord stated that they did not receive rent for August or September 2018. The Landlord issued the 10 Day Notice on August 15, 2018. The Tenant acknowledged receiving this notice on August 17, 2018. The Tenant stated that he ordered his cheques right after the last hearing, and he did not have them in time to pay rent in August by cheque. The Tenant stated he offered to pay in cash, but the Landlord insisted on the Tenant paying by cheque or money order, as the Arbitrator ordered.

The Tenant stated he finally has his cheques now, and can make payments, but stated that the Landlord is being difficult and not accepting his cash payments while he waits for his cheques to be delivered.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I make the following findings:

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 after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution.

I turn to the 10 Day Notice, which the Tenant acknowledged receiving on August 17, 2018. This 10 Day Notice indicated that \$1,165.00 in rent was not paid on August 1, 2018, as was required by the tenancy agreement. The Tenant acknowledged getting an order from the Arbitrator in his previous hearing stating that he was required to pay rent by cheque or money order as of August 1, 2018. The Tenant stated that he ordered his cheques but did not receive them in time to use them as a method of payment for August 2018. The Tenant stated that he offered to pay by cash, but the Landlord was difficult and insisted on the Tenant paying by cheque or money order.

I have considered the evidence and testimony on this matter, and I note that the Tenant was required, as ordered by the Arbitrator in July of 2018, to pay rent by cheque or money order. I acknowledge that the Tenant had not received his cheques in time for his August rent payment. However, the Tenant was also able to pay by money order, and still comply with the Arbitrator's order in July. However, he did not do so. The Tenant chose to again try and pay by cash, which was no longer an acceptable method of payment, given the findings at the previous hearing.

The Tenant stated that he has not yet paid rent for August of September of 2018.

After receiving the 10 Day Notice on August 17, 2018, the Tenant had 5 days to pay rent in full and file an application for dispute resolution. Although the Tenant offered to pay in cash, this was in contravention of the order placed on him by the previous Arbitrator. The Tenant could have paid with money order while he was waiting for his

cheques to arrive. However, he did not do so. Since the Tenant failed to pay rent, as required, within 5 days after getting the 10 Day Notice, I dismiss the Tenant's application to cancel the Notice.

As the Tenants' 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 received by the Tenant on August 17, 2018, 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.

Given my findings on this matter, I find it is not necessary to look at the other Notices issued by the Landlord.

Conclusion

The Tenant's application is dismissed, in full, without leave to reapply.

The Landlord is granted an order of possession effective **two days after service** on the Tenants. This order must be served on the Tenants. If the Tenants fail 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.

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 13, 2018

Residential Tenancy Branch