



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LAT, ERP, RR, MNDCT, LRE, OLC

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 requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- 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 landlord's agents 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. The landlord's assistant T.L. (the landlord) indicated that they were the primary speaker for the landlord during the hearing.

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) and Amendment to the Application for Dispute Resolution (Amendment) which were sent by registered mail on August 17, 2018. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application and Amendment.

The landlord acknowledged receipt of the tenant's evidence which was left in the mailbox for the landlord's agent on August 22, 2018. In accordance with section 88 of the Act, I find that the landlord is duly served with the tenant's evidence.

The tenant acknowledged receipt of the landlord's evidence which was left with them on September 03, 2018. In accordance with section 88 of the Act, I find that the tenant was duly served with the landlord's evidence.

The tenant confirmed that they received a 10 Day Notice on August 14, 2018. In accordance with section 88 of the Act, I find the tenant was duly served with 10 Day Notice on August 14, 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

Both parties agreed that this tenancy began on April 01, 2016, with a monthly rent of \$2,200.00, due on the first day of each month. The landlord and tenant agreed that a security deposit in the amount of \$1,100.00 was paid to the landlord.

A copy of the signed 10 Day Notice, dated August 06, 2018, and identifying \$5,750.00 in unpaid rent with an effective date of August 21, 2018, was provided in the evidence.

The landlord provided in evidence:

- Images of two cheques for different amounts, from the tenant and both dated June 21, 2018, which the landlord states they were not able to redeem at their financial institution;

The tenant provided in evidence:

- a written statement which indicates that the tenant had incurred a financial loss in their business due to the landlord not addressing a rodent problem in the downstairs unit. The tenant also indicates in this statement that they overpaid the landlord in April 2018 by \$2,700.00 and that this overpayment should be applied to the outstanding rent; and
- a copy of a bank statement for April 2018 which shows payments of \$2,200.00 on April 03, 2018, \$5,400.00 for April 04, 2018, and \$4,000.00 on April 17, 2018.

The landlord testified that the tenant has not paid any rent for May 2018 and June 2018 in the amount of \$4,400.00. The landlord testified that they are seeking an Order of Possession for unpaid rent.

The tenant submitted that the amount on the 10 Day Notice is wrong. The tenant stated that they overpaid the landlord by \$2,700.00 in a previous rental payment and confirmed in their testimony that they owed the balance of unpaid rent for June 2018. The tenant confirmed that the two cheques that were provided to the landlord were both cancelled by the author of the cheques before the landlord was able to redeem them.

The landlord disputed the tenant's stated overpayment and affirmed that the \$2,200.00 paid on April 03, 2018, was for February 2018 rent as the tenant's initial payment for February 2018 was not successful. The landlord stated that the \$5,400.00 was only for the downstairs unit, which the tenant and the landlord have a separate business arrangement for, and the \$4,000.00 payment consisted of \$2,200.00 for April 2018 rent and \$1,800.00 for the downstairs unit which is under a separate business agreement.

The tenant did not dispute the landlord's testimony regarding the allocation of payments made in April 2018.

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 August 14, 2018, I find the tenant had until August 19, 2018, to dispute the 10 Day Notice or to pay the full amount of the arrears.

I find that the tenant submitted their initial Application on July 17, 2018, and then submitted the Amendment to dispute the 10 Day Notice on August 14, 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.

I find that the tenant confirmed in their testimony and their written statement that there is unpaid rent owing for May 2018 and June 2018.

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

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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 Application, I find that the landlord is 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 landlord 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 14, 2018

Residential Tenancy Branch