



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: OPC, OPR, FF
 TENANT: MT, AAT, CNC, CNR, ERP, LRE, OLC, PSF

Introduction

This matter dealt with an application by both the Landlords and the Tenant.

The Landlords have applied to end the tenancy, for an Order of Possession, for compensation for unpaid rent and to recover the filing fee.

The Tenant has applied to for more time to make the application, to cancel the Notices to End Tenancy, for emergency repairs to be made, to allow access to the unit, to change the locks on the unit, to restrict the right of enter of the Landlord and for the Landlord to provide services and facilities in the tenancy agreement.

The Landlords said they served the Tenant with the Application and Notice of Hearing (the “hearing package”) by personal delivery and posted it on the door on September 7, 2018 as required by s. 89 of the Act.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on September 28, 2018 as required by s. 89 of the Act. .

Issues(s) to be Decided

Landlord:

1. Does the Landlord have grounds to end the tenancy?
2. Is there unpaid rent?

Tenant:

- 1 Is the Tenant entitled to more time to make the application?
- 2 Is the Tenant entitled to an order to cancel the Notices to End Tenancy?
- 3 Is the Tenant entitled to access to the unit?
- 4 Is the Tenant entitled to changing the locks on the unit?
- 5 Should the Landlords' right of entry be restricted?
- 6 Has the Landlords complied with the Act, regulations and tenancy agreement?
- 7 Have the Landlords provide services and facilities as required in the tenancy agreement?

Background and Evidence

This tenancy started on February 10, 2018 as a month to month tenancy. Rent is \$650.00 per month payable on the 1st day of each month. The Tenant did not pay a security deposit.

The Landlords said they issued a 10 Day Notice to End Tenancy for unpaid rent dated September 6, 2018 by personal delivery and by posted it to the door of the Tenant's unit on September 6, 2018. The Notice to End Tenancy has an effective vacancy date of September 16, 2018. The Landlord continued to say he issued the Notice to End Tenancy because the Tenant has unpaid rent for September, 2018 of \$650.00. The Landlord continued to say the Tenant has not paid the October 2018 rent of \$650.00 as well.

The Tenant agreed that she has unpaid rent in the amount of \$1,300.00. The Tenant continued to say she has been looking for a new rental unit but it is difficult to find a unit that she can afford.

The Landlord said they want to end the tenancy as so as possible. As well they are requesting a monetary order for unpaid rent of \$1,300.00 and \$400.00 for laundry costs as the Tenant has blocked the laundry room for the last few months. The Landlord's Advocate said the Landlords did not submit the laundry receipts, but she did take her parents to do their laundry. The Landlords also requested to recover the filing fee of \$100.00.

The Tenant was told by the Arbitrator that she filed her application late to dispute both the 10 Day Notice to End Tenancy for Unpaid Rent and for the 1 Month Notice to End Tenancy for Cause.

The Tenant said the reason she filed late was that she could not get her car out of the driveway because the Landlord was blocking her.

The Tenant said in closing she understands that there is unpaid rent and she filed her applications late and she is looking for a new rental unit.

The Landlord said they want to end the tenancy as soon as possible.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent, a Tenant may apply for dispute resolution. If the Tenant fails to do this, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted on the door, or on September 10, 2018. Consequently, the Tenant would have had to apply to dispute the Notice by September 15, 2018. The Tenant's application was received by the Residential Tenancy Branch on September 26, 2018.

I find that the Tenant applied to dispute the Notice to End Tenancy on September 26, 2018 which is 16 days after the time limit to apply for dispute resolution. Consequently, I find the Tenants application is outside of the time limits to dispute a Notice to End Tenancy and pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

Further, section 26 (1) 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 the right under this Act to deduct all or a portion of the rent.

I find the Tenant does not have the right to withhold the rent payments; therefore I find for the Landlord and I order the Landlord to recover the unpaid rent in the amount of \$1,300.00 and the filing fee of \$100.00 for this proceeding from the Tenant.

As the Landlords did not provide corroborative evidence to support their claim of \$400.00 for laundry expenses I dismiss this claim without leave to reapply.

Further as the Tenant has agreed there is unpaid rent I dismiss the Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated September 6, 2018. As well, the tenancy is ending therefore the other claims in the Tenant's application are dismissed without leave to reapply as these claims were dependant on the tenancy continuing.

Conclusion

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

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,400.00 have been issued to the Landlords. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) 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: October 16, 2018

Residential Tenancy Branch