



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BURNABY LOUGHEED LIONS HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 28, 2018 (the “Application”). The Tenant disputed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 20, 2018 (the “Notice”). The Tenant also sought more time to file.

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties and answered their questions in this regard. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose in relation to this.

At the outset, the Tenant advised that she was not disputing the Notice but that she needed more time to find a new place to live. I outlined the settlement option for the parties; however, no agreement was discussed or reached. I outlined the Tenant’s options in relation to the Application. The Tenant sought to withdraw the Application; however, the Landlord opposed this as the Landlord sought an Order of Possession based on the Notice. I proceeded to collect the necessary evidence to determine the validity of the Notice and whether the Landlord should be granted an Order of Possession based on it.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Tenant be granted more time to file the Application?
2. Should the Notice be cancelled?
3. If the Notice is not cancelled, should the Landlord be issued an Order of Possession based on the Notice?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between "Landlord 2", as noted on the front page of this decision, and the Tenant in relation to the rental unit. The tenancy started October 1, 2004 and is a month-to-month tenancy. Rent is due on the first day of each month. The parties agreed rent is currently \$280.00 per month.

The Notice states that the Tenant failed to pay \$1,750.00 in rent due September 1, 2018. It is addressed to the Tenant and refers to the rental unit address. It is signed and dated by the Landlord. It has an effective date of September 30, 2018. The Tenant did not take issue with the form or content of the Notice, other than the outstanding rent amount.

The Landlord testified that he posted the Notice on the door of the rental unit on September 20, 2018.

The Tenant testified that she did not file the Application in time because she did not receive the Notice until a few days after it was posted on her door. She testified that she was away from the rental unit and did not receive the Notice until September 23, 2018.

The Landlord disputed that the Tenant was away from the rental unit as he said he observed her vehicle in her parking spot during this time. The Tenant testified that she was away from the rental unit and did not take her vehicle.

Both parties agreed the Tenant only made one payment of \$160.00 after the Notice was served and this was on October 2, 2018.

The Tenant testified that she disputed the Notice because she did not agree with the amount of outstanding rent stated on the Notice. She acknowledged that \$952.00 of rent was outstanding at the time the Notice was issued. She said \$952.00 was

outstanding because she was waiting for money from a third party to come in. The Tenant acknowledged she did not have authority under the *Act* to withhold rent.

The Landlord had submitted a rent ledger. I went over this with the Landlord during the hearing; however, it was not clear to me that the Tenant owed \$1,750.00 as of September 1, 2018. The ledger shows \$1,032.00 was outstanding as of September 1, 2018.

Both parties agreed the rent was \$476.00 for August and that the Tenant did not pay this amount. Further, the rent ledger shows \$80.00 was outstanding from June rent and the Tenant agreed the ledger is accurate.

Analysis

Section 26(1) of the *Residential Tenancy Act* (the “*Act*”) requires tenants to pay rent when it is due under the tenancy agreement unless the tenant has a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when tenants fail to pay rent. The relevant portions of section 46 state:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52...

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this *Act* to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

...

Section 55(1) of the *Act* requires me to issue an Order of Possession when a tenant has disputed a notice to end tenancy and the application is dismissed or the notice is upheld. The notice must comply with section 52 of the *Act*.

The parties did not agree on the amount of outstanding rent as of September 1, 2018. However, the Tenant acknowledged she owed at least \$952.00 in rent as of September 1, 2018. She advised that she did not pay rent because she was waiting for money from a third party. This does not relieve the Tenant of her obligation to pay rent under the tenancy agreement. The Tenant acknowledged she did not have authority under the *Act* to withhold rent. I find the Tenant was required to pay rent under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Given the Tenant failed to pay rent as required, the Landlord was entitled to serve her with the Notice pursuant to section 46(1) of the *Act*.

I accept the testimony of the Landlord that he posted the Notice on the door of the rental unit on September 20, 2018. The Tenant did not dispute this. The Tenant testified that she was away from the rental unit and did not receive the Notice until September 23, 2018. The Landlord disputed this based on the Tenant's vehicle being in her parking spot during this period. The Tenant advised that she did not have her vehicle with her at the time. I accept the testimony of the Tenant in relation to when she received the Notice. I do not find that the presence of her vehicle is sufficient to call into question her evidence that she was away from the rental unit.

Based on the testimony of both parties, I find the Tenant was served with the Notice in accordance with section 88(g) of the *Act*.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the Notice on September 23, 2018 to pay or dispute it under section 46(4) of the *Act*. The parties agreed the Tenant only made one payment of \$160.00 after the Notice was issued and that this was on October 2, 2018. This was not sufficient to cancel the Notice under section 46(4)(a) of the *Act*.

The Tenant filed the Application September 28, 2018. This was within the five-day time limit set out in section 46(4) of the *Act*. I find the Tenant filed the Application in time and therefore her request for further time to file is a moot point.

The Tenant disputed the Notice because she did not agree with the amount on the Notice. However, the Tenant acknowledged that \$952.00 in rent was outstanding as of September 1, 2018. There was no issue that the Tenant did not pay this outstanding amount. In the circumstances, I do not find the incorrect amount on the Notice to be a valid basis to dispute the Notice. I dismiss the Tenant's Application to dispute the Notice.

Given I have dismissed the Tenant's Application and have found the Notice complies with section 52 of the *Act*, the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*.

The Landlord asked that an Order of Possession be effective November 30, 2018 if issued based on the Notice.

Conclusion

The Tenant's request for more time to file the Application is a moot point as I find she filed the Application within time.

The Tenant's dispute of the Notice is dismissed. The Landlord is issued an Order of Possession effective at 1:00 p.m. on November 30, 2018. This Order must be served on the Tenant. If the Tenant does not comply with this Order, it may be filed in the Supreme Court 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 *Act*.

Dated: November 08, 2018

Residential Tenancy Branch