



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: CNR, MT, DRI, ERP, MNR, RP, RR, MNDC, OLC, FFT
Landlord: OPR, MNR, MNDC - S, FFL

Introduction

This hearing was convened in response to cross- applications by both parties pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows. The landlord applied September 21, 2018 for/to:

1. An Order of Possession due to unpaid rent - Section 55
2. A Monetary Order for unpaid rent and loss (\$25,300.00)- Section 67
3. To retain the security deposit in partial satisfaction of the claim – Section 38
4. An Order to recover the filing fee for this application - Section 72

The tenant applied September 22, 2018 for/to:

1. More time to file an application to cancel the landlord's Notice to End - Section 66
2. Cancel a Notice to End for Unpaid Rent dated September 11, 2018 - Section 46
3. Dispute an additional rent increase – Section 43
4. Emergency repairs – Section 33
5. Monetary Order for tenant's cost for emergency repairs – Section 67
6. Repairs to the unit – Section 32
7. Rent reduction for repairs, services or facilities – Section 65
8. Compensation for loss (\$35,000) – Section 67
9. For landlord to comply with the Act – Section 62
10. Recover filing fee – Section 72

Both parties attended the hearing. The tenant acknowledged receiving the application and evidence of the landlord. The tenant claimed they sent their Notice of Hearing to

the landlord, A.L., by e-mail. The tenant acknowledged not submitting any evidence in respect to this hearing. Landlord A.L. and their agent denied receiving the tenant's application by any method and have not received any evidence.

Preliminary matters: service, request for more time to file for cancellation of Notice, request for adjournment

The parties acknowledged the tenant received the landlord's 10 Day Notice to End dated September 11, 2018 which was posted on the tenant's door the same date. The tenant is deemed by Section 90 of the Act to have received the Notice September 14, 2018 and they filed their application no sooner than September 22, 2018. To the question of why they did not file an application to cancel the landlord's 10 Day Notice to End of this matter earlier by September 19, 2018, the tenant replied they were focusing on trying to settle matters of the tenancy with the landlord, and because they worked nights, was "sick", their printer was broken, and they were awaiting evidence from their bank which they claimed should only have required 2 weeks.

The tenant requested an adjournment of the hearing to allow them to submit recordings and other document evidence from their bank, and also because they were "sick", work nightshifts, their printer was broken, and more recently in the past week they went to a lawyer whom could not appear today. The landlord was not in agreement with an adjournment as they have lost an abundance of rent revenue and the tenant has yet to pay rent for the current month. The tenant did not advance other information as to why they did not attend to more diligent preparations for this hearing since making their application; however testified they relied on their request for an adjournment being granted.

I considered the tenant's testimony of their attempt to serve the landlord with their application and hearing documents by email. I also considered the tenant's request for an adjournment of all matters and considered the landlord's protest. I further

considered the tenant's reason for not having filed their application to dispute the landlord's Notice to End within the required time to do so.

I found the tenant did not serve their application to the landlord in a manner they were instructed by the Branch or in a manner prescribed by Section 89 of the Act and no corroborative evidence has been presented by the tenant establishing the landlord was ever served by email. I found that even if I accepted the tenant's service of hearing documents by email pursuant to Section 71 of the Act I am not satisfied by the tenants oral submission that they diligently pursued preparations for the hearing nor provided any evidence in support of their claim for an adjournment. I found that even if I had accepted the tenant's service of documents, or their quest for an adjournment, I found the tenant did not provide sufficient evidence, or evidence of *exceptional circumstances* permitting me to extend the time limit for them to dispute the landlord's Notice to End of this matter pursuant to Section 66 of the Act.

Altogether and as a result of the above I must dismiss the tenant's application in its entirety. More specifically, I am **dismissing** the tenant's application to cancel the landlord's Notice to End dated September 11, 2018, *without leave to reapply*. And, as the tenant did not submit any evidence in this matter whatsoever in support of their monetary claim I find the landlord is not prejudiced in respect to their future ability to respond to it. Therefore, I **dismiss** the balance of the tenant's application (any remaining relevant monetary issues) *with leave to reapply*.

The hearing advanced on the merits of the landlord's application.

Issue(s) to be Decided

Is the Notice to end tenancy valid?

Should the Notice be cancelled?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started November 01, 2016. The parties agreed that rent in the amount of \$2200.00 is payable in advance on the first day of each month. The parties agreed that at the outset of the tenancy, the landlord collected a security deposit and a pet damage deposit from the tenant in the sum of \$2200.00 which the landlord retains in trust.

And, the parties agreed that no rent was satisfied for July, August, September and October 2018 and further that no rent has yet been paid for November 2018.

On September 11, 2018 the landlord served the tenant with a Notice to End tenancy for non-payment of rent stating the tenant owed total rent of \$25,300.00 albeit this included potential loss of rent revenue for October and November 2018 as well. The landlord itemized that the tenant owed unpaid rent for the year 2017 in the amount of \$7700.00 and for 6 months in 2018 of \$13,200.00 to September. The tenant disputed they owed rent for April to June 2018 having last paid rent in and for the month of June 2018. They claim that in time they will have proof of their version of payments; however they did acknowledged not paying rent for July, August, September and October 2018, but having the money “in escrow”. The tenant applied to dispute the landlord’s Notice but at no time after receiving the Notice paid the rent they acknowledged was unpaid to the date of the Notice in the amount of \$6600.00, for July to September of 2018.

The landlord, on the other hand, claims additional unpaid rent to October 2018 in the amount \$15,400.00 however did not provide a running ledger displaying the accounting for this amount. The parties argued over issues in the tenancy as described by the tenant, the majority of which the landlord testified they were not made aware, such as the tenant’s claim of no heat for the past year.

Analysis

On preponderance of the evidence I find as follows.

Section 26 of the Act in part states;

Rules about payment and non-payment of rent

- 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 a right under this Act to deduct all or a portion of the rent.

I find I have not been presented with sufficient evidence by the landlord to support their entire monetary claim. However, I have not been presented evidence the tenant had any right under the Act to withhold any rent or deduct a portion of it. Based on the testimony of both parties I find that the tenant was served with a notice to end tenancy for non-payment of rent. I find the notice to be valid pursuant to Section 52 of the Act. The tenant's own evidence is that they have not paid the outstanding amounts of rent for July to October 2018 and have not satisfied the rent for November 2018 despite their application to dispute the landlord's Notice. Regardless, their application in this matter to set aside the landlord's Notice to End has been dismissed as a preliminary matter.

Section 55(1) of the Act states that if I dismiss the tenant's application or uphold the landlord's Notice to End I must grant the landlord an Order of Possession.

Based on the above I find that the landlord is entitled to an **Order of Possession**.

I also find that the landlord has *clearly* established an entitlement to unpaid rent for the 4 months of July through the current month of November 2018. Any balance of the landlord's monetary claim for unpaid rent is dismissed, *with leave to reapply* if the landlord has proof that the balance of the unpaid rent they claim has not been paid.

The landlord is also entitled to recovery of the filing fee. The deposits of the tenancy will be off-set from the award made herein.

Calculation for Monetary Order

Unpaid rent July to November 2018	\$11,000.00
Landlord's filing fee for the cost of application	\$100.00
Landlord's net award	\$11,100.00
<i>Less tenant's security and pet damage deposits in trust</i>	<i>-\$2,200.00</i>
Total Monetary Award / landlord	\$8,900.00

I grant an Order of Possession to the landlord **effective 2 days** from the day it is served on the tenant. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I Order that the landlord retain the pet damage deposit and security deposit in the sum of \$2200.00 in partial satisfaction of the award and **I grant** the landlord an Order under Section 67 of the Act for the balance due of **\$8900.00**. If the tenant does not satisfy this Order the Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application in part is granted, and the balance *dismissed with leave to reapply*.

The tenant's application to cancel the landlord's 10 Day Notice to End is **dismissed**, and solely the balance of their application respecting monetary issues is also *dismissed* but *with leave to reapply*.

This Decision is final and binding.

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: November 07, 2018

Residential Tenancy Branch