



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR LRE MT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on October 4, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Cause, dated October 3, 2018 (the "10 Day Notice");
- an order suspending or setting conditions on the Landlords' right to enter the rental unit; and
- an order granting more time to make the Application.

The Tenant attended the hearing on her own behalf. The Landlords were both represented at the hearing by B.C. Both the Tenant and B.C. provided affirmed testimony.

The Tenant testified the Application package was served on the Landlords in person. B.C. acknowledged receipt on behalf of the Landlords. In addition, the Landlords submitted documentary evidence in response to the Application. On behalf of the Landlords, B.C. testified it was served on the Tenant in person. The Tenant acknowledged receipt. No issues were raised with respect to service or receipt of the above documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with the opportunity to present their evidence orally and in written and documentary form, and make submissions. 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 sought more time to make the Application. However, the Application was made in time on October 4, 2018, the day after the 10 Day Notice was received. Accordingly, more time is not required. This aspect of the Application is dismissed. It has not been considered further.

In addition, Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The parties were advised that the most important issue to address during this hearing was whether or not the tenancy will continue. Accordingly, only the impact of the 10 Day Notice was considered during the hearing. In light of my conclusions, set out below, the Tenant's request for an order suspending or setting conditions on the Landlords' right to enter the rental unit is dismissed.

Issue to be Decided

Is the Tenant entitled to an order cancelling the One Month Notice?

Background and Evidence

The parties confirmed the tenancy began on or about April 1, 2018. Rent in the amount of \$925.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$462.50. which the Landlords hold.

On behalf of the Landlord, B.C. testified rent was not paid in full when due on October 1, 2018. Accordingly, the Landlords issued the 10 Day Notice, which was served on the Tenant by posting a copy to the door of the Tenant's rental unit on October 3, 2018. The Tenant's Application confirms receipt of the 10 Day Notice on October 3, 2018. At that time, rent in the amount of \$820.00 was outstanding.

B.C. also testified that rent was not paid when due on November 1, 2018, and that rent totalling \$1,745.00 is currently outstanding.

In reply, the Tenant acknowledged rent was not paid as alleged. She testified she did not pay because the 10 Day Notice had been issued and she felt it better to spend the rent money on finding alternative accommodation.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms a tenant must pay rent when due, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Section 46 of the *Act* permits a landlord to take steps to end a tenancy if rent remains unpaid on any day after the day it is due.

In this case, based on the evidence provided by the Landlords and the Tenant, I find that rent was not paid when due on October 1 and November 1, 2018, and that rent in the amount of \$1,745.00 is outstanding. I find there is insufficient evidence before me to conclude the Tenant had a right under the *Act* to deduct all or a portion of the rent. Accordingly, the Tenant's Application is dismissed without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. Having reviewed the 10 Day Notice submitted into evidence, I find it complied with section 52 of the *Act*. Accordingly, I find the Landlords are entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Conclusion

The Tenant's Application is dismissed, without leave to reapply.

Pursuant to section 55(1) of the *Act*, I find the Landlords are entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of BC.

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 16, 2018

Residential Tenancy Branch