



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, AAT, ERP, LAT, LRE, OLC

Introduction

On November 8, 2018, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* ("the *Act*") to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10-Day Notice"), to cancel a One-Month Notice to End Tenancy for Cause, (the "One-Month Notice"), for an order to allow access to the rental unit for the Tenant or their guests, for an order for the Landlord to make emergency repairs to the rental unit, to request authorization to change the locks, to suspend or set conditions on the Landlords' right to enter the rental unit, for an order for the Landlord to comply with the *Act*, and an order for the Landlord to provide services or facilities required by the tenancy agreement or the *Act*. The matter was set for a conference call.

The Landlord, her Agent and her Translator (the "Landlord") as well as the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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 Issue - Tenant's Request for Adjournment

At the outset of the hearing the Tenant requested that the hearing be adjourned because she claimed that she needed to appear in court for another matter. The Tenant testified that she had just learned of her requirement to attend court on December 14, 2018. The Tenant testified that she did have documentation from the court that showed she was required to attend. The Tenant also confirmed that she did not submit that documentation to these proceedings.

The Landlord objected to the adjournment, as this matter with the Tenant had been going on for some time and a further delay would be unfair to her and the other Tenants living in the rental property.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure states that either the applicant or the respondent or their agent may request at the hearing that it be adjourned.

Rule 7.9 (Criteria for granting an adjournment) establishes the criteria the director will consider when determining a request for an adjournment. Considerations for a request to adjourn include:

- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I find that the possible prejudice to the landlord outweighs all of the other considerations as a further delay in the proceeding could result in significant financial loss to the landlord. I, therefore, decline to adjourn today's hearing.

Preliminary Issue – Jurisdiction

Jurisdictional issues were also brought up by the Tenant at the outset of the hearing. The Tenant testified that the Landlord would occasionally use the bathroom and kitchen in her rental unit and that due to this the *Act* did not apply to her tenancy.

The Tenant testified that she needed to go and disconnected from the hearing.

The Landlord testified that the rental unit has five bedrooms that are all rented out separately to five different tenants and that they share the bathroom and kitchen. The Landlord testified that they do not use the bathroom or kitchen in the rental unit and that this tenancy does fall under the jurisdiction of the *Act*.

I find that the parties, in this case, offered conflicting verbal testimony regarding the Landlords' possible use of the kitchen and bathroom in the rental unit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have carefully reviewed the documentary evidence submitted by the Tenant, and I find that there is no evidence before me to show that the Landlord has used the kitchen or bathroom in this rental unit. Therefore, I find that the Tenant has not provided sufficient evidence to show that this tenancy does not fall under the jurisdiction of the *Act*.

I find that the *Residential Tenancy Act* does apply to this tenancy, and I accept jurisdiction over this matter.

Preliminary Matters- Related Issues

I have reviewed the Tenant's application, and I note that she has applied to cancel two Notices to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Tenant's request to cancel these Notices. As these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Tenant's claims for an order to allow access to the rental unit for the Tenant or their guests, for an order for the Landlord to make emergency repairs to the rental unit, to request authorization to change the locks, to suspend or set conditions on the Landlords' right to enter the rental unit, for an order for the Landlord to comply with the *Act*, and an order for the Landlord to provide services or facilities required by the tenancy agreement or the *Act*.

I will proceed with this hearing on the Tenant's claim to cancel the 10-Day Notice and to Cancel the One-Month Notice.

Issues to be Decided

- Should the Notice issued on November 6, 2018, be cancelled?
- Should the Notice issued on November 15, 2018, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

The Landlord testified that the tenancy began on November 1, 2016. Rent in the amount of \$1000.00 is to be paid by the first day of each month, and the Landlord is not holding a security deposit or pet damage deposit for this tenancy.

The Landlord testified that she served the 10-Day Notice to the Tenant on November 6, 2018, by posting it to the front door of the rental unit. The 10-Day Notice has an effective date of November 18, 2018, and an outstanding rent amount of \$1,500.00.

The Landlord also testified that the Tenant did pay \$2000.00 in rent on December 1, 2018.

The Landlord is requesting that the Notice be enforced and that an order of possession be issued, as the Tenant did not pay the rent within five days of receiving the 10-Day Notice as required.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

- 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 *[form and content of notice to end tenancy]*.
- (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.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

I find that the Tenant received the 10-Day notice on November 9, 2018, three days after it was posted to the front door of the rental unit, pursuant to section 90 of the *Act* and that she did apply to dispute the Notice within the legislated timeline.

I accept the undisputed testimony of the Landlord that the Tenant had not paid the outstanding rent as stated on the 10-Day Notice within the required five days. Therefore, I find that the Tenant is in breach of section 26 of the *Act* by not paying the rent in accordance with the tenancy agreement and I dismiss the Tenant's application to cancel the 10-Day Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Order of possession for the landlord

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (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.

I have reviewed the 10-Day Notice to End Tenancy, and I find the 10-Day Notice complies with section 52 of the Act. As I have dismissed the Tenant's application, pursuant to section 55 of the Act, I must grant the Landlords an order of possession to the rental unit.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

As this tenancy is ending in accordance with the 10-Day Notice, I find that there is no need to address the Tenant's additional claim to dispute the One-Month Notice.

Conclusion

I grant an **Order of Possession** to the Landlord effective **two days** after service of this Order on the Tenant. Should the Tenant 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: December 17, 2018

Residential Tenancy Branch