



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT CNC CNR DRI LAT LRE MT OLC OPT PSF

Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the tenant's application to:

- Cancel a landlord's 10 Day Notice to End Tenancy For Unpaid Rent ("10 Day Notice") pursuant to section 46 of the *Act*;
- Cancel a landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 47 of the *Act*;
- More time to dispute the notice to end tenancy pursuant to section 66 of the *Act*;
- An Order allowing the tenant to change the locks to the rental unit pursuant to section 70 of the *Act*;
- Dispute a rent increase that is above the amount allowable by law pursuant to section 42 of the *Act*;
- An Order directing the landlord to comply with the *Act* pursuant to section 62 of the *Act*;
- An Order suspending or setting conditions on the landlord's right to enter the rental unit pursuant to section 65 of the *Act*; and
- An Order for the landlord to allow access to the unit or site pursuant to section 70 of the *Act*.

Both the tenant and the landlord's agent, M.C. (the "landlord") attended the hearing. The tenant was assisted by B.L. All parties present were provided a full opportunity to provide sworn testimony, to present submissions and evidence, and to ask questions of the other party.

The landlord explained two notices to end tenancy were issued. On October 15, 2018 the tenant was sent a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") by way of Canada Post Registered Mail. The tenant confirmed receipt of this 1 Month Notice and is found to have been duly served with the notice in accordance with section 88 of the *Act*. On December 8, 2018, the tenant placed a 10 Day Notice for unpaid rent on the tenant's door. The tenant confirmed receipt of this 10 Day Notice and is found to

have been duly served with the notice in accordance with section 88 of the *Act*. The landlord said he sent a copy of his evidentiary package to the tenant by way of Canada Post Registered Mail on December 13, 2018. The landlord provided a copy of the Canada Post Registered Mail receipt as part of his evidentiary package. While the tenant denied having received these documents, I find pursuant to sections 88 & 90 of the *Act* that the tenant is deemed served with these documents on December 18, 2018, five days after their posting.

The tenant confirmed she did not submit any evidence to the hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution and is found to have been served with the tenant's application in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Can the tenant cancel the notices to end tenancy?

Should the tenant be granted more time to dispute these notices?

Should the landlord be directed to comply with the *Act*?

Can the tenant change the locks to the rental unit?

Can the tenant dispute an additional rent increase?

Background and Evidence

The tenant said she began occupying the rental unit on December 11, 2017. The tenant explained she did not know how much her rent was or if a security deposit was paid at the outset of the tenancy because her rent was paid by social services.

The landlord said that rent was \$880.00 per month and a security deposit of \$440.00 paid at the outset of the tenancy continued to be held by the landlord. The landlord confirmed the unit was subsidized by social services to the amount of \$430.00, leaving the tenant to pay \$450.00 per month in rent. The landlord explained the tenancy had originally been entered into by the tenant's father and mother-in-law. In December 2017, the tenant's father passed, and the tenancy was assumed by the tenant's mother-in-law,

with the tenant moving in shortly afterwards. On June 15, 2018 the tenant's mother-in-law vacated the unit, leaving the tenant to assume the tenancy.

The landlord said only the subsidized portion of rent was paid for July, August, September, October, November or December 2018. The landlord explained that a 1 Month Notice was issued on October 15, 2018 citing the following reasons:

- *Tenant is repeatedly late paying rent*
- *Tenant has allowed an unreasonable number of occupants in the unit*
- *Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord*
- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.*

On December 8, 2018, the landlord served the tenant with a 10 Day Notice citing unpaid rent in the amount of \$1,855.00. The landlord explained this amount represented the un-subsidized portion of the rent of \$450.00 per month which had not been paid since July 2018. The landlord said rent was now outstanding in the amount of \$2,611.00.

The tenant confirmed receipt of both notices to end tenancy but said she did not understand the proper avenue to dispute the notices. B.L. who attended the hearing to assist the tenant explained the tenant had suffered from a cognitive injury that caused her difficulty and resulted in her leading a somewhat disorganized life. B.L. said the tenant understood that rent was due but she could not pay it because she was under the impression that the rent was paid by social services. The tenant has asked for more time to dispute the notices to end tenancy because of her confusion around her legal rights.

Analysis

At the hearing the tenant acknowledged she had failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy posted on her door on December 8, 2018 and failed to dispute the notice within five days of receipt of this notice. While the tenant did ultimately dispute the 10 Day Notice, little evidence was presented at the hearing as to why this rent remained unpaid or why this notice was disputed beyond

the five day allowable time limit pursuant to section 46 of the *Act*. The tenant said she did not understand the process to dispute the notices; however, I place little weight on this argument as the tenant applied to dispute the landlord's 1 Month Notice on November 22, 2018. The tenant therefore had knowledge of the dispute process when the 10 Day Notice was served to her on December 8, 2018. Furthermore, I do not accept the tenant's testimony that she did not understand how much rent was due because the 10 Day Notice entered in evidence by the landlord, clearly showed the amount which was outstanding.

In accordance with section 46(5) of the *Act*, the tenant's failure to pay rent or apply to dispute the notice within the allowable time frame has led to the end of this tenancy. I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As this tenancy is ending pursuant to the 10 Day Notice, the remainder of the tenant's application will not be considered and is dismissed without leave to reapply.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial 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: January 8, 2019

Residential Tenancy Branch