



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNR CNC LRE OLC LAT
Landlord: OPR MNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on January 15, 2019. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided testimony. The Landlord was represented by two agents (referred to as the Landlord), and the Tenant was present with her friend (referred to as the Tenant). Both parties confirmed receipt of each others application and evidence packages.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 Issues

Both parties are seeking multiple remedies under multiple sections of the *Act*, a number of which were not sufficiently related to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues both parties applied for, and based on the evidence before me, I find the most pressing and related issues in this cross-application are

related to the payment/non-payment of rent and the order of possession (whether or not the tenancy will continue, or end, based on the Notice issued.) As a result, I exercise my discretion to dismiss, with leave to reapply, all of the grounds in both applications with the exception of the following grounds:

- an order of possession based on a 10-Day Notice (the Notice) for unpaid rent or utilities and whether or not the Tenant is entitled to have this Notice cancelled; and,
- a monetary order for the Landlord for unpaid rent or utilities.;

Issues to be Decided

- Should the 10 Day Notice to End Tenancy be cancelled?
 - If not, is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

Both parties agreed in the hearing that monthly rent in the amount of \$1,100.00 was to be paid on the first of each month. Both parties also agreed that the Landlord currently holds a security deposit in the amount of \$550.00. The Landlord stated that the Tenant failed to pay any rent for December of 2018, or January of 2019, and now owes \$2,200.00 in rent for these months.

The Tenant testified that she did not pay rent for December 2018 or January 2019. The Tenant stated that the Landlord issued a 1 Month Notice for Cause at the end of November 2018. The Tenant stated that due to the Landlord issuing these Notices (10 Day Notice and 1 Month Notice), she has been unable to get funding from the Ministry, and is now unable to pay for rent, due to the Landlord's actions. The Tenant stated that the Landlord has caused the Ministry to cut off her rent payments. The Tenant also stated that there are some issues with the tenancy, and there are a few items she is not happy with. The Tenant suggested that these items were partly why rent has not been paid, although the Tenant stated that she is now unable to pay because she has lost her job, and has been cut off from Ministry funding for her tenancy.

The Tenant acknowledged getting the 10 Day Notice on December 3, 2018, which indicated that \$1,100.00 was outstanding for rent for the month of December 2018.

Analysis

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

I find the 10 Day Notice was received by the Tenant on December 3, 2018. Further, the undisputed testimony of both parties is that rent was not paid when due on December 1, 2018, and January 1, 2019, and that \$2,200.00 is currently outstanding in terms of rent. Further, I find that filing an application for dispute resolution does not give a tenant a right under the *Act* to deduct all or a portion of the rent.

As rent has not been paid when due, and there is insufficient evidence before me that the Tenant had a right under the *Act* to deduct all or a portion of rent, I find that the Tenant's Application is dismissed. 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, I find it complied with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

In light of my finding that the tenancy is ending on the basis of unpaid rent, I find it has not been necessary for me to consider the Tenant's request for an order cancelling the One Month Notice.

Next, I turn to the Landlord's request for a monetary order for unpaid rent. After considering the evidence before me, I find there is sufficient evidence to demonstrate that the tenant owes and has failed to pay rent for the months of December 2018 and January 2019 (\$1,100.00 x 2).

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$2,200.00
Other:	
Filing fee	\$100.00
LESS:	
Security Deposit currently held by Landlord	(\$550.00)
TOTAL:	\$1,750.00

Conclusion

The Tenant's application to cancel the 10 Day Notice is dismissed.

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,750.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: January 17, 2019

Residential Tenancy Branch