



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the Residential Tenancy Act (the "Act") for:

- Cancellation of the landlord's 10 Day Notice To End Tenancy For Unpaid Rent or Utilities dated December 4, 2018 (the "December Ten-Day Notice") pursuant to section 47;
- Cancellation of the landlord's 10 Day Notice To End Tenancy For Unpaid Rent or Utilities dated January 4, 2019 (the "January Ten-Day Notice") pursuant to section 47; and
- An order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The landlord appeared and she was represented by her advocate, GC. The tenant also appeared. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord acknowledged receipt of the Notice of Hearing and Application for Dispute Resolution.

Both parties acknowledged that they received the other party's evidence packages. However, the tenant claimed that she received the landlord's evidence package late. The landlord testified that she sent her evidence package to the tenant by registered mail on January 9, 2019. The landlord provided a Canada Post tracking number for this delivery.

Residential Tenancy Branch (the "RTB") Rules of Procedure 3.15 requires the respondent to serve their evidence at least seven days before the hearing.

Although the landlord sent her evidence by registered mail on January 9, 2019, the landlord's evidence is deemed to have been served five days later on January 14, 2019 pursuant to section 90 of the *Act*. As the deemed date of service on the tenant was seven days before the hearing, I find that the landlord has timely served her evidence package on the tenant.

The tenant filed an amendment to her application on January 10, 2019. The tenant testified that she did not serve the amendment on the landlord because she did not know that service was required.

Preliminary Issue: Name Correction

The landlord testified that her name was spelled incorrectly on this dispute resolution application. Pursuant to 64(3)(c) of the *Act*, I hereby amend this application to correct the spelling of the landlord's name.

Preliminary Issue: Tenant's Amendment

The tenant testified that she did not serve her amendment on the landlord. RTB Rules of Procedure 4.6 states that:

4.6 Serving an Amendment to an Application for Dispute Resolution

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act ... and these Rules of Procedure. The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

The landlord was notified of the amendment at the hearing and the landlord confirmed that she did not receive the amendment. However, despite not receiving service of the tenant's amendment, the landlord did not make an objection to the hearing of tenant's amendment pursuant to RTB Rules of Procedure, Rule 4.7. In the absence of an objection from the landlord, I will hear the tenant's application as amended.

Preliminary Issue: Severance of Portion of Tenant's Application

Residential Tenancy Branch Rules of Procedure 2.3 state that:

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.

It is my determination that the priority claim regarding the ten day notices and the continuation of this tenancy are not sufficiently related to the tenant's other claim to warrant that they be heard together. The parties were given a priority hearing to address the question of the validity of the ten day notices.

The tenant's other claim is unrelated in that it does not pertain to facts relevant to the grounds for ending this tenancy as set out in the ten day notices. I exercise my discretion to dismiss all the tenant's claims with leave to reapply except for the cancellation of the ten day notices.

Both parties were informed of section 55 of the *Act* which requires that, when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy in compliance with the *Act*.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the December Ten-Day Notice?
2. Is the tenant entitled to cancellation of the January Ten-Day Notice?
3. If the tenant's applications are dismissed and either the December Ten-Day Notice or the January Ten-Day Notice are upheld, is the landlord entitled to an order of possession, pursuant to section 55 of the *Act*?

Background and Evidence

The parties agreed that a written tenancy agreement was signed on September 29, 2018 for a six months fixed term tenancy starting on October 1, 2018. The rent was \$1,650.00 due on the first day of each month. The tenant delivered a security deposit of \$825.00 which the landlord still holds. There was no pet damage deposit. A copy the tenancy agreement was entered into evidence.

The landlord testified that the October 2018 rent was paid by an e-transfer for \$1,150.00 and \$500.00 in cash.

The landlord testified that her agent JL, gave the tenant permission to pay the November rent late. The landlord testified that the tenant unsuccessfully attempted to pay the rent by e-transfer multiple times in November before finally paying the rent in full on November 24, 2018 by e-transfer.

The landlord testified that the tenant did not pay the December 2018 rent. The landlord testified that she and her agent JL went to the rental unit on December 4, 2018 to serve the December Ten-Day Notice. The notice claimed \$1,650.00 in unpaid rent due on December 1, 2018 with a stated vacancy date of December 14, 2018. The parties agreed that the landlord delivered the December Ten-Day Notice personally to the tenant on December 4, 2018.

The landlord testified that the tenant did not make any attempt to pay the December rent during the meeting on December 4, 2018.

The landlord testified that she and JL returned to the property on December 17, 2018 to find out what the tenant's intentions were regarding the notice to end tenancy. The landlord testified that the tenant did not make any attempt to pay the December rent during this meeting.

The landlord testified that the January Ten-Day Notice was posted on the tenant's door on January 4, 2018. The landlord testified that the January Ten-Day Notice stated arrears of \$1,650.00 owing from January 1, 2018. A copy of the January Ten-Day Notice and a witnessed proof of service of the notice were submitted as evidence. The tenant did not dispute the service of either the December Ten-day Notice or the January Ten-Day Notice.

The landlord presented a list of emails showing e-transfer rent payments by the tenant. The document showed multiple e-transfers from the tenant to the landlord in November

2018. The landlord testified that there were multiple e-transfer entries in November 2018 because the tenant's e-transfers failed multiple times. The email list did not show any e-transfer payments from the tenant to the landlord from December 2018 to January 8, 2019.

The landlord also submitted as evidence a text message exchange between the tenant and landlord's agent JL. In a text message sent on December 20, 2018 at 7:09 p.m., JL told the tenant that they still have not received the December rent. The tenant responded with a text on the same day at 8:18 p.m. with a message stating that she had tried to pay the rent two times in cash. The tenant also stated that she will deposit the cash into her bank account and then do an e-transfer to the landlord the next day.

The landlord testified that the tenant has not made any payments towards the December 2018 or January 2019 rent.

The tenant testified that she had difficulty making the e-transfer rent payment in November 2018 because the wrong name was used by the electronic payment processing service. The November 2018 rent was eventually paid in full on November 24, 2018.

The tenant testified that the landlord performed an inspection of the rental unit on November 28, 2018. The tenant testified that following the inspection (or at the inspection??), the landlord told the tenant to remove tools from the rental unit, to remove vehicles from the property which were not owned by the tenant and that occupants not listed on the tenancy agreement must vacate the property.

The tenant testified that the landlord and her agent JL returned to the property on December 4, 2018 to inspect the property again. During this meeting, the tenant stated that she tried to pay the December 2018 rent by cash. The tenant testified that she showed the landlord the full amount of \$1,650.00 in cash in her hand and she offered it to the landlord. However, the tenant testified that the landlord refused to accept the cash. The tenant said that the landlord told her that she does not want the rent payment. Rather, the tenant testified that the landlord told her that she just wanted the tenant to move out.

The tenant testified that the landlord and her agent JL returned to the property on December 17, 2018 to ask when the tenant planned to move out. The tenant testified that she again offered to pay the full amount of rent in cash but the landlord again

refused. The tenant testified that this time she was not holding the cash. However, she testified that the cash was readily available in her bedroom upstairs.

MB, an occupant of the property, testified as a witness on behalf of the tenant. MB testified that he was also at the property on December 17, 2018 and he witnessed the conversation between tenant and the landlord. MB testified that the tenant offered to pay the full rent in cash but the landlord refused. However, unlike the tenant's testimony, MB testified that the tenant was holding the cash in her hand when she offered to pay the December rent in cash.

The tenant testified that she did not make any further attempts to pay the December 2018 rent. She testified that she wanted to wait for the resolution of this application before trying to pay the rent again.

The tenant acknowledged that she has not paid the January 2019 rent which was due on January 1, 2019.

Analysis

While I have considered the oral and documentary evidence in its totality, I will only refer to relevant portions in my decision

To dispute a 10 Day Notice To End Tenancy For Unpaid Rent or Utilities, the tenant must file an Application for Dispute Resolution within five days of service of the notice pursuant to section 46(4) of the *Act*.

In this matter, the December Notice was served on December 4, 2018 and the fifth calendar day after the date of service was Sunday, December 9, 2018. However, since the deadline fell on a Sunday, the tenant's deadline to file an application for dispute resolution was extended to Monday, December 10, 2018. Accordingly, the tenant timely filed this application for dispute resolution by filing it on December 10, 2018.

In addition, the January Notice was served on January 4, 2019 by posting on the tenant's door. Pursuant to section 90 of the *Act*, a notice served by posting on the door is deemed to have been served three days after posting. Accordingly, the January Notice is deemed to have been served on January 7, 2019 and the fifth calendar date after the effective date of service would be January 12, 2019. Accordingly, the tenant timely amended her claim to dispute the January Notice on January 10, 2019.

As set out in the RTB Rules of Procedure 6.6, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for the notice. Accordingly, the landlord's December Ten-Day Notice and January Ten-day Notice must be cancelled unless the landlord can prove on a balance of probabilities that the tenant has failed to timely pay rent as stated in these notices.

Since the landlord has issued two notices to end tenancy, I will analyze each notice to end tenancy separately. I will consider first the January Notice.

At the hearing, the tenant acknowledged that she failed to pay the rent for January 2019. The only reason the tenant provided for not paying the January rent was that she wanted to wait for this hearing before paying the January rent. The tenant testified that she was reluctant to pay further rent if the landlord was going to be issued an order of possession anyway regarding the December Notice.

Section 26(1) of the *Act* states, "A tenant must pay rent when it is due under the tenancy agreement, 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."

While the tenant has disputed the January Notice, no evidence was presented at the hearing as to why the January rent remained unpaid, other than the tenant's stated tactical decision to withhold payment of the January rent pending the results of this hearing. No evidence was presented at the hearing demonstrating that the tenants had been granted an order from an arbitrator with the RTB that held that rent did not have to be paid.

I find that the tenant's failure to pay the January rent violates section 26 of the *Act* and I accordingly deny the tenant's request to cancel the January Notice.

I find the form and content of the January Ten-Day Notice complies with section 52 of the *Act*. Accordingly, pursuant to section 55 of the *Act*, I find that the landlord is entitled to an order of possession.

Since I have determined that the landlord is entitled to an order of possession regarding the January Notice, the tenant's request to cancel the December Notice is moot and does not need to be considered.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. This order must be served 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: January 22, 2019

Residential Tenancy Branch