



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, FFT

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 (the 10 Day Notice) pursuant to section 46;
- an order to have the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant, the tenant's advocate, and both landlords (collectively the "landlord"), appeared at the hearing. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she served the notice of dispute resolution package, along with her evidence, to the landlord personally, by giving it to the building manager on January 14, 2019. The landlord confirmed receipt of the notice of dispute resolution package and the tenant's evidence. Therefore, I find that the landlord has been duly served with the notice of dispute resolution package, in accordance with section 89 of the Act.

The landlord testified that its evidence was provided to the tenant by hand, and the tenant confirmed receipt of the landlord's evidence.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession? Should the landlord be ordered to complete emergency repairs to the rental unit? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The relevant aspects of the tenant's claim and my findings around it are set out below.

The parties agreed that the tenancy began on November 01, 2013. The monthly rent was determined to be due on the first day of each month, and the monthly rent was set at \$1,300.00. The current monthly rent owed is \$1,476.00. The tenant provided a security deposit in the amount of \$650.00 which continues to be held by the landlord. The parties testified that a tenancy agreement was signed at the start of the tenancy. Neither party submitted a copy of a written tenancy agreement as evidence.

The parties agreed that the tenant also pays a sum of \$20.00 each month for parking.

The landlord testified that the tenant has not paid rent for the month of January 2019, and that the 10 Day Notice was issued as a result of the non-payment for that month.

The landlord issued a 10 Day Notice, dated January 05, 2019, which the landlord states was served to the tenant on January 05, 2019, for \$1,496.00 in unpaid rent due on January 01, 2019, with a stated effective vacancy date of January 15, 2019. The landlord testified that the sum of \$1,496.00 indicated of the 10 Day Notice is comprised of monthly rent owed for January 2019 in the amount of \$1,476.00 and the monthly parking fee owed in the amount of \$20.00. The landlord testified that the 10 Day Notice was served to the tenant by way of slipping the 10 Day Notice under the door of the rental unit.

The landlord testified that the tenant withheld the monthly rent owed for January 2019 as a result of the tenant's belief that emergency repairs are needed to the rental unit due to the issue of mice in the apartment building. The landlord stated that the issue of the mice in the building does not qualify as an emergency repair. The landlord testified that they have been aware of the issue of mice being present in common areas of the

building and in certain units within the building. The landlord testified that they have been proactive in dealing with the issue of the mice, as they had contracted the services of a pest control company, which, for the purpose of this decision, will be identified as “CPC”.

The landlord testified that they undertook great effort and diligence by contracting the services of CPC until July 2018, for routine services and other maintenance and issues apart from the mouse problem identified by the tenant. The landlord testified that CPC provided service to remediate and eradicate the issue of mice in the building. The landlord testified that CPC would attend the building every three weeks to service common areas and specific units that were identified either by the occupants of those units or by the landlord as needing specific treatment to address mice or rodent issues.

The landlord testified that in July 2018, a new pest control company was hired, which will be referred to as “TPM”. The landlord provided that TPM provided services to eradicate the mice and closed openings leading to the building to further mitigate the possibility of mice or other rodents entering the building.

The landlord testified that TPM attended the rental unit in October 2018 and December 2018 to provide treatment specifically to the rental unit. The landlord testified that the first occasion on which the tenant notified the landlord of the mice issue in the rental unit was by way of the tenant’s letter to the landlord dated October 09, 2018. The landlord testified that they acted promptly and had TPM attend the unit. The landlord testified that the tenant provided another letter dated December 26, 2018 to highlight the issue of mice, and that the landlord again had TPM attend the rental unit to provide eradication services.

The landlord stated that the issue of mice does not qualify as an emergency repair under the Act, and that whether the issue qualifies as an emergency repair or regular repair, the landlord has been both proactive and prompt in dealing with the issue by hiring two different professional companies to provided remediation services to the common areas of the building and to specific units of the building to address the issue.

The landlord testified that tenant cannot withhold rent by claiming the issue of mice to be an emergency repair, as the conditions of the Act do not apply. Once the tenant advised the landlord of the issue, the landlord undertook immediate action to address the issue, such that the tenant did not adhere to all of the provisions as set out in section 33 of the Act.

The landlord testified that even if the tenant purchased mouse traps on her own accord to mitigate the issue of mice in the unit, the tenant's decision to do so does not negate the fact that the landlord had already contracted a professional company to provide eradication services to the rental unit, and that the landlord's action in providing professional services to address the issue satisfied the landlord's obligation under the Act.

The landlord testified that the tenant withheld rent in violation of the Act, and that the landlord was justified in issuing a 10 Day Notice for unpaid rent for the month of January 2019.

The tenant testified that she withheld rent for the month of January 2019, as an emergency repair was needed to the rental unit due to mice being present in the unit. The tenant testified that she purchased two different types of mouse traps and placed them throughout the rental unit in an effort to mitigate the issue of mice in the unit.

The tenant testified that she notified the landlord of the mice issue on October 09, 2018 by way of a letter to the landlord, and provided a subsequent letter on December 26, 2018.

The tenant testified that she did not pay any rent for the month of January 2019. The tenant stated that she received the 10 Day Notice on January 05, 2019, and that she subsequently applied for dispute resolution on January 10, 2019 to dispute the 10 Day Notice.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 33 of the Act allows tenants, in specific circumstances, to deduct amounts from rent that the tenants have paid in order to make emergency repairs to the rental unit. I find that the issue of mice in the rental unit does not qualify as an emergency repair as

set out in section 33(1) of the Act. Even in if the issue of mice in the rental unit was deemed an emergency repair, I find that the landlord acted promptly by contacting a professional pest control company to attend the rental unit and provide extermination services, thereby demonstrating that the landlord adhered to its obligation to provide services to repair and mitigate the issue presented by the tenant.

Even if the issue met the criteria for an emergency repair, such action on the part of the landlord would satisfy the landlord's requirement to act as set out in section 33 of the Act. Therefore, it would not be open to the tenant to withhold rent under section 33(7), as the circumstances enabling the tenant to do so did not exist in this case. The tenant was not required to undertake and complete emergency repairs, and bear the costs of those repairs. Therefore, I find that the tenant was not permitted to withhold rent under sections 33(7) or 26(1) of the Act.

The tenant provided testimony in which she stated that she did not pay rent owed for the month of January 2019. I accept the testimony of the landlord which depicts that the tenant was not permitted to withhold any portion of the monthly rent owed at any time during the tenancy, either in accordance with the Act or by mutual agreement between the parties.

Therefore, the landlord had leave under section 46 of the Act to issue a 10 Day Notice for non-payment of rent owed for the month of January 2019.

The landlord testified that the 10 Day Notice was served by sliding the Notice under the door on January 05, 2015. Despite this method of service not being compliant with the requirements allowed under Section 88 of the Act, the tenant acknowledged that she received it on January 05, 2019.

Furthermore, after receiving the 10 Day Notice, the tenant was able to take subsequent action to seek remedies afforded to her under the Act by applying for dispute resolution to dispute the 10 Day Notice in accordance with section 46(4)(d) of the Act or paying the outstanding in rent within 5 days of receipt of the Notice.

Therefore, I find that the tenant has not been prejudiced by receiving the 10 Day Notice in this manner and that service in this manner did not hinder the tenant's ability to dispute the 10 Day Notice or pay the outstanding rent.

Although not served with the 10 Day Notice in accordance with section 88 of the Act, I find, based on the tenant's testimony, that she received the 10 Day Notice on

January 05, 2019 and is sufficiently served with it pursuant to section 71(2)(c) of the Act, which allows an Arbitrator to find a document sufficiently served for the purposes of the Act.

The tenant provided sworn testimony that she did not pay rent for the month of January 2019. Based on the testimony provided by the parties, I find that the tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice and failed to prove that she had grounds to withhold payment of the rent in accordance with either sections 33(7) or 26(1) of the Act.

Accordingly, I dismiss the tenants' application to cancel the 10 Day Notice dated January 05, 2019.

Section 55 of the Act provides that if a tenant applies to dispute a notice to end tenancy, an Arbitrator is required to issue an Order of Possession if the tenant's application is dismissed, and if the notice complies with section 52 of the Act

Section 52 of the Act outlines the form and content required for a notice to end tenancy issued under the Act. I have reviewed the 10 Day Notice dated January 05, 2019 and find it complies with section 52 of the Act in form and content.

I have dismissed the tenant's application to dispute the 10 Day Notice and found the 10 Day Notice complies with section 52 of the Act. Therefore, pursuant to section 55 of the Act, I issue the landlord an Order of Possession for the rental unit.

I also note that I accept the undisputed testimony of the landlord that the tenant had no authority to withhold rent and that the tenant never paid the outstanding rent. Therefore, section 46(3) and 46(4)(a) of the Act do not apply.

I grant the landlord an Order of Possession effective two days after service on the tenant, as the effective date of the 10 Day Notice has passed and the tenant has not paid rent for the month of January 2019.

Conclusion

As the landlord has been issued an Order of Possession, the tenant's request to have the landlord ordered to make emergency repairs to the rental unit is rendered moot.

The tenant's application is dismissed, in its entirety, without leave to re-apply.

Pursuant to section 55 of the Act, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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: February 07, 2019

Residential Tenancy Branch