Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNR MNDC ERP PSF

Introduction

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

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46 (the 10 Day Notice);
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. No issues were raised with respect to the service of the application.

Preliminary Issues – Scope of Application and Adjournment request by Tenant

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the tenant's application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

At the outset of the hearing, the tenant requested an adjournment on the grounds that she did not have adequate time to gather evidence and prepare for the hearing. The tenant submits

that someone served the landlord with the application on her behalf as she was out of province. The tenant submits that as a result she was not aware of the timelines for submitting evidence.

The tenant's request for an adjournment was denied. This was the tenant's application therefore the tenant should have been aware of the hearing date and time as well as the requirements for submitting evidence.

Issues

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began in August 2015. The current monthly rent is $1185.00 plus utilities payable on the 1st day of each month.

The parties agreed that the tenant received the 10 Day Notice on January 3, 2019. The outstanding rent amount as per the 10 Day Notice was $1485.00 which was due on January 1, 2019. This included January 2019 rent plus $300.00 outstanding from December 2018.

The landlord testified that the tenant did not pay the full amount of the arrears indicated on the 10 Day Notice within five days of being served and that the full amount is still outstanding. The landlord testified that he has not received any rent since. The landlord testified that he normally received rent directly from social services but did not receive anything for January or February 2019. The landlord testified that he received a cheque in December 2018 for the full rent; however, $300.00 was returned to the tenant as she stated the cheque was not supposed to be for the full amount and that she didn't some money to live off.

The tenant claims that the landlord has received rent payments directly and that rent for January 2019 was paid to the landlord. The tenant submits that she is waiting to get evidence of the payments from social services. The tenant did not dispute that she was in arrears $300.00 for December 2018.

Analysis

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the notice is upheld the

landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the landlord's testimony that he has not received any payment directly from social services for the January 2019 rent. I also accept that the tenant was in rent arrears of $300.00 from December 2018. I find the tenant provided insufficient evidence of the rent cheques being issued directly by social services to the landlord and that these cheques have been cashed by the landlord. I find the tenant had ample time to gather this evidence since being served with the 10 Day Notice. I also find that the tenant did not dispute the $300.00 arrears from December 2018 or provide any evidence of this amount being paid to the landlord after being served with the 10 Day Notice.

The tenant's application to cancel the 10 Day Notice dated January 3, 2019 is dismissed.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Conclusion

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 14, 2019

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Residential Tenancy Branch