



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, CNR, ERP, RR, RP, PSF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence provided by the other party. Neither party raised any service issues. As both parties have attended and confirmed receipt of the notice of hearing

package(s) and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served.

Preliminary Issue(s)

At the outset, the applications for both parties were clarified. The landlord has applied for an order of possession and a monetary claim for unpaid rent and recovery of the filing fee. The tenant has applied for an order cancelling the 10 Day Notice, an order for emergency repairs, for repairs, for the landlord to provide services or facilities agreed upon but not provided, for a reduction in rent for services or facilities agreed upon but not provided and a monetary claim for money owed or compensation for damage or loss. The tenant stated that for other than the request to cancel the 10 Day Notice, the tenant had applied in a separate application for those issues to be dealt with. As such, those portions of the tenant's application were cancelled as they were a duplication to be dealt with separately. The hearing proceeded on the remaining issues listed below.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the tenant entitled to an order cancelling the 10 Day Notice?

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 principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on January 15, 2018 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated January 3, 2018. The monthly rent is \$1,500.00 payable on the 1st day of each month. A security deposit of \$750.00 was paid on January 3, 2018.

The landlord seeks an order of possession, a monetary claim of unpaid rent of \$1,500.00 and recovery of the \$100.00 filing fee. The tenant seeks an order cancelling the 10 Day Notice dated January 5, 2019.

Both parties confirmed that the landlord served the tenant with a 10 Day Notice dated January 5, 2019 in person on January 5, 2019. The 10 Day Notice sets out that the

tenant failed to pay rent of \$1,500.00 that was due on January 1, 2019 and provides for an effective end of tenancy date of January 15, 2019.

The landlord claims that since the 10 Day Notice dated January 5, 2019 was served, the tenant has not paid any rent up to the date of this hearing. The tenant argued that the landlord had refused to accept a cash rent payment. Both parties confirmed that there is an ongoing issue on the terms of paying rent. The landlord stated that since the tenancy began on January 15, 2018, the tenant had paid rent via eTransfer as well as the payment of a security deposit. Both parties confirmed that the tenant was having issues in complying with the landlord's wish to pay rent via eTransfer. The tenant stated that all of her conversations regarding payment of rent were verbal and that no documentary evidence exists regarding her claim that the landlord refused to accept rent. The landlord argued that at no time has rent ever been refused, be it eTransfer or cash payments.

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.

In this case, I accept the undisputed evidence of both parties that the 10 Day Notice dated January 5, 2019 was personally served upon the tenant on January 5, 2019. Both parties also confirmed in their direct testimony that rent was owed for January (\$1,500.00) and February (\$1,500.00) totalling, \$3,000.00.

The tenant has claimed that the landlord has refused to accept cash payment of rent. The landlord has disputed this claim.

Both parties acknowledged that there is an ongoing dispute of how rent should be paid. The tenant wished to make payment via cash, but claims that the landlord has refused acceptance of this method of payment. The landlord disputes this claim stating that no rent has been refused and that normal payment of rent has been established as via eTransfer.

In this case, the issue before me is whether the landlord refused payment of rent. I find on a balance of probabilities that the tenant has failed to provide sufficient evidence of refused payment. Both parties have confirmed the proper service of the 10 Day Notice

and that rent for January and February 2019 has not been received by the landlord. On this basis, I find that the landlord has established grounds to end the tenancy for unpaid rent. The tenant's application is dismissed. The 10 Day Notice dated January 5, 2019 is upheld and the landlord is granted an order of possession for unpaid rent. The notice is to be effective 2 days after upon the tenant being served.

As for the monetary claim of the landlord, I find based upon the undisputed evidence of both parties that rent for January and February 2019 has not been received by the landlord for total owing of \$3,000.00 in unpaid rent. Although the landlord applied for only \$1,500.00, I find that the ongoing dispute shows that no rent has been paid for February 2019.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession and a monetary order for \$3,100.00.

These orders must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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 19, 2019

Residential Tenancy Branch