



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: AAT CNR ERP LAT LRE MNDCT MNRT MT OLC OPT
PSF RP RR
Landlord: OPR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on February 22, 2019. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided testimony. Both parties confirmed receipt of each other's 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.

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?

Background and Evidence

Both parties agreed in the hearing that monthly rent in the amount of \$1,000.00 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 \$500.00. The Landlord stated that the Tenant failed to pay any rent for December of 2018, January of 2019, or February 2019.

Both parties agreed that no tenancy agreement was signed. The Landlord stated that she collected a security deposit from one of the Tenants, G.S., on December 21, 2018. The Landlord stated that the G.S. was supposed to move in on January 1, 2019, but he let himself into the unit a few days early, without permission. The Tenant who was at the hearing, K.P., stated she moved in at the end of December 2018, and that the other Tenant, G.S., is now in jail for assaulting her, so he couldn't attend the hearing.

The parties largely disagreed on the details surrounding the start of the tenancy but during the hearing, the witness for the Landlord referred to both individuals as "tenants" and stated he saw them both in the rental unit during the month of January.

K.P. acknowledged getting the 10 Day Notice on January 5, 2019, and acknowledges that she did not pay rent. She stated that she is willing to pay now if the Landlord would allow the tenancy to continue. The Landlord wanted the tenancy to end for both K.P. and G.S.

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 Tenants on January 5, 2019. Further, the undisputed testimony of both parties is that rent has not been paid at all since the Tenants moved in. 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 Tenants had a right under the *Act* to deduct all or a portion of rent, I find that the Tenants' 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 Tenants.

Since the Landlord did not make an application for monetary compensation for unpaid rent, I will not make any orders with respect to how much is owed by the Tenants. The Landlord must file a separate application for that matter.

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 the Landlord to withhold \$100.00 from the security deposit, which leaves a balance of \$400.00.

Conclusion

The Tenants' 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 tenants. If the tenants fail 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.

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 25, 2019

Residential Tenancy Branch