



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP
 MNRL-S, OPR, FFL

Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) and for an order for the Landlords to complete emergency repairs. The Landlords applied for an Order of Possession based on the 10 Day Notice, for monetary compensation for unpaid rent, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and an agent for the Landlord (the “Landlord”) were present for the teleconference hearing, as was the Tenant. The parties confirmed receipt of the Notice of Dispute Resolution Proceeding package regarding the other party’s application. The Landlord also confirmed receipt of a copy of the Tenant’s evidence. The Tenant stated that she did not receive a copy of the Landlord’s evidence and the Landlord confirmed that it was not served to the Tenant as they were not aware of this requirement. As stated by rule 3.14 of the *Residential Tenancy Branch Rules of Procedure*, evidence from the applicant must be received by the Residential Tenancy Branch and the respondent not less than 14 days prior to the hearing.

As such, the Landlords’ documentary evidence is not accepted and will not be considered in this decision.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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.

Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent be cancelled?

If the 10 Day Notice to End Tenancy for Unpaid Rent is upheld, are the Landlords entitled to an Order of Possession?

Are the Landlords entitled to monetary compensation for unpaid rent?

Should the Landlords be ordered to complete emergency repairs?

Should the Landlords be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement that the tenancy started on July 1, 2018 and that monthly rent in the amount of \$2,300.00 is due on the first day of each month. The Landlord stated that \$1,000.00 was paid as a security deposit and \$600.00 as a pet damage deposit, while the Tenant stated that she paid a security deposit and pet damage deposit totalling \$1,700.00. The tenancy agreement was submitted into evidence but was only partially submitted.

The Landlord testified that a 10 Day Notice was served to the Tenant in person on January 7, 2019. The Tenant confirmed receipt of the 10 Day Notice on this day.

The 10 Day Notice was included as evidence and states that \$3,100.00 in rent was unpaid as due on January 1, 2019 and that \$233.70 for utilities was unpaid as due on January 1, 2019. The effective end of tenancy date of the 10 Day Notice was stated as January 15, 2019.

The Landlord provided testimony that the Tenant owes an amount of \$5,400.00 for unpaid rent. They stated that the Tenant underpaid by \$500.00 in October 2018, underpaid by \$1,100.00 for November 2018, overpaid by \$800.00 in December 2018 and did not pay any rent towards January or February 2019 rent. The Landlord stated

that they have not received any payments towards the rent owing since serving the Tenant with the 10 Day Notice and therefore the Landlord is seeking \$5,400.00 in unpaid rent.

In text messages submitted as evidence and through her testimony, the Tenant questioned the amount claimed by the Landlords for unpaid rent. She acknowledged that rent was paid late or in partial payments at times but questioned whether the calculations by the Landlords were accurate as receipts for rent paid were not provided. However, she stated that she made a cash payment of \$3,200.00 on January 9, 2019 when the Landlord was attending the rental unit for a repair. She stated that this amount was for rent as well as towards utilities.

The Tenant stated that she did not receive a receipt. The Tenant stated that she was aware that paying the overdue rent would cancel the notice, but that she filed an Application for Dispute Resolution as a precaution. The Tenant filed her application on January 14, 2019.

The Tenant stated that although she usually paid by e-transfer, there were times when she paid in cash, such as on January 9, 2019. The Landlord stated that he did not receive any money towards rent in January 2019 and that an amount of \$5,400.00 remains outstanding.

The Tenant submitted into evidence bank statements and circled a payment of \$2,300.00 for September 2018 rent, \$1,300.00 for October and another payment of \$500.00 for October 2018 rent. The Tenant stated that she did not have information to show a withdrawal of \$3,200.00 for January 2019 as this amount was given to her by a family member. The Tenant stated that the tenancy began with a co-tenant who has since moved out and that some of the rent payments were made by the co-tenant. The Tenant testified that rent for February 2019 was not paid as she was waiting for the outcome of the dispute resolution proceeding.

The Tenant also submitted approximately 150 page of text messages with the Landlord in which they discuss late payments of rent and rent owing. In a text message exchange on January 14, 2019 the Landlord tells the Tenant how much rent is owed, and the Tenant advises the Landlord to use the security deposit for rent. The upcoming hearing is discussed in these text messages but there is no mention that rent was paid in full.

The Tenant also requested that the Landlord complete emergency repairs and stated that the dishwasher is leaking water and that there is concern for water getting on the

floor and causing damage. The Tenant also stated that the dishwasher does not close properly. Submitted into the Tenant's evidence was a text message on December 25, 2018 in which the Tenant notified the Landlord that the dishwasher was broken.

The Landlord stated that they attended the rental unit to look at the dishwasher issue and determined that it was a problem with the faucet which they fixed on January 9, 2018.

Analysis

The parties were in agreement that the Tenant was served with the 10 Day Notice in person on January 7, 2019. Section 46(4) of the *Act* states the following:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect,
 - or
 - (b) dispute the notice by making an application for dispute resolution.

The Tenant filed the Application for Dispute Resolution on January 14, 2019, which is 7 days after receipt of the 10 Day Notice. However, the Tenant claimed that she paid the rent owing on January 9, 2019; two days after receipt of the 10 Day Notice.

The Landlord stated that no money was paid towards rent owing since service of the 10 Day Notice. Based on the testimony and evidence, I find it unlikely that a payment of \$3,200.00 was made on January 9, 2019. In the Tenant's text message evidence, dated January 14, 2019 the parties discuss the rent owing and the Tenant suggests that the security deposit can be put towards the rent, which would not have been necessary had the rent been paid in full on January 9, 2019.

The Tenant confirmed that she was aware that payment of rent within 5 days would cancel the 10 Day Notice, however she applied to dispute the notice on January 14, 2019 after she claimed the rent was already paid. Based on the testimony of both parties, the evidence of the Tenant, and on a balance of probabilities, I find it unlikely that the outstanding rent was paid. As such, I find that the Tenant did not pay the rent owing or apply to dispute the notice within the 5 days provided under Section 46(4) of the *Act*. Therefore, I find that Section 46(5) of the *Act* applies, and the Tenant is conclusively presumed to have accepted that the tenancy ends based on the 10 Day Notice. Therefore, the Tenant's application to cancel the 10 Day Notice is dismissed.

Pursuant to Section 55(1) of the *Act*, I award the Landlord an Order of Possession, effective two days after service on the Tenant.

As for the monetary claim of the Landlord, the parties agreed that there was some outstanding rent when the 10 Day Notice was served but were not in agreement as to whether a payment of \$3,200.00 was made in January 2019. As stated above, I find it more likely than not that this payment was not made and therefore find that rent is owing. However, without sufficient evidence to confirm how much rent is owing from October, November or December 2018, and the partial payments made during this time, I am not satisfied as to these amounts claimed by the Landlord. As stated in the *Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim.

However, based on the testimony of both parties, I find that no money was paid since the 10 Day Notice was served which means that January and February 2019 rent is still owing. The Tenant agreed that February 2019 rent was not paid and as stated, I find it likely that no payments were made in January 2019. Therefore, I award the Landlords compensation in the amount of \$4,600.00 for rent for January and February 2019.

As for the Tenant's claim for emergency repairs, I refer to Section 33(1) of the *Act* which provides a definition for emergency repairs as follows:

- 33 (1) In this section, "**emergency repairs**" means repairs that are
- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

While the Tenant testified as to an issue with the dishwasher that causes it to not close properly and causes risk for leaking water on the floor, I do not find that this fits the definition of an emergency repair as noted above. The Landlord also provided testimony

that the issue was repaired. As such, I am not satisfied that the dishwasher is an emergency repair and I decline to make any emergency repair orders. The Tenant's application is dismissed, without leave to reapply.

As the Landlord was partially successful with their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Landlord is awarded a Monetary Order in the amount of \$4,700.00 for January and February 2019 rent and for the \$100.00 filing fee.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply. I grant an Order of Possession to the Landlords effective **two days after service of this Order** 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.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a **Monetary Order** in the amount of **\$4,700.00**. The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 27, 2019

Residential Tenancy Branch