Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL CNR ERP LRE MNDCT MT RP

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") file on February 6, 2019.

The tenant sought several orders under sections 49 (cancel a Two Month Notice to End Tenancy for Landlord's Use of Property), 46 (cancel two 10 Day Notices to End Tenancy for Unpaid Rent), 32 and 62 (emergency repairs and regular repairs), 70 (landlord right to enter is suspended or restricted), 67 (compensation), and 66 (more time to file an application).

A dispute resolution hearing was convened on March 11, 2019 and the landlords, their interpreter, and the tenant attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. Neither party raised any issue with respect to the service of documentary evidence.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

I note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord's notice to end tenancy complies with the Act.

Preliminary Issue: Dismissal of Claims Unrelated to the Notice

Rule 2.3 of the *Rules of Procedure,* under the Act, states that claims made in an application must be related to each other. It further states that an arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply.

Having reviewed the tenants' application, I find that the claims other than the application to dispute the Two Month and the 10 Day notices are unrelated to this central claim. The most important matter is: will this tenancy continue?

I explained to the parties that I would be dismissing the tenant's claims not related to the Two Month and the two 10 Day notices, with leave to reapply.

Issues to be Decided

1. Is the tenant entitled to order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent issued on January 28, 2019 (the "first 10 Day Notice")?
2. If not, are the landlords entitled to an order of possession?
3. Is the tenant entitled to an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent issued on February 10, 2019 (the "second 10 Day Notice")?
4. If not, are the landlords entitled to an order of possession?
5. Is the tenant entitled to an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice")?
6. If not, are the landlords entitled to an order of possession?

Background and Evidence

The landlords testified that the tenancy commenced on July 1, 2018. Monthly rent is $1,000.00, due on the first of the month. There was no security deposit or pet damage deposit. A copy of the written tenancy agreement was submitted into evidence.

In late December 2018, the landlords offered free rent for January and February 2019 in exchange for the tenant's vacating the rental unit by the end of February. This discussion, offer and acceptance occurred by text message on or after December 22, 2019. The landlords attempted to have the tenant sign a document confirming their oral agreement, in writing. The tenant refused to sign, saying that his word was sufficient.

The landlords argued that the tenant's refusal to sign anything, and his continued occupation of the rental unit beyond the end of February prove that he does not consider the oral agreement to be valid.

As the tenant refused the sign anything confirming this arrangement, the landlords issued the first 10 Day Notice on January 28, 2019, by posting it on the tenant's door. The first 10 Day Notice indicated that rent in the amount of $1,000.00 was owing. It also indicated that unpaid utilities in the amount of $1,000.00 was owing (the landlords later admitted during the hearing that this was an error on their part, due to English not being their first language).

On January 28, 2019, the landlords also issued the Two Month Notice, which indicated that the landlord's parents would be occupying the rental unit on March 31, 2019. The parents have VISAs but have not yet booked a flight because the tenant continues to reside in the rental unit.

On February 10, 2019, the landlords issued the second 10 Day Notice for unpaid rent and testified that the tenant has not paid rent for January, February or March 2019.

The tenant testified that he had made an agreement with the landlords for two months of free rent and for him to move out by the end of February 2019. He did not believe that he needed to sign any paperwork for this oral agreement. He was all ready to move, but the landlords gave prospective landlords a bad reference, so he is stuck living in the rental unit until he can find a new place. He does not want to live in the rental unit and is awaiting a response from a potential new place.

In rebuttal, the landlords testified that because it was only an oral argument that had been made, the landlords wanted the tenant to sign some paperwork.

The tenant applied for more time to file for dispute resolution (under section 66), and the landlords argued that there are no exceptional circumstances provided by the tenant as to why he filed his application for dispute resolution outside the five days permitted by the Act.

In rebuttal, the tenant testified that the first 10 Day Notice (and presumably the Two Month Notice) were dropped off at 10 PM, and that he did in fact file within the required deadline.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based.

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 the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Under the Act there are only four instances where a tenant has a right to deduct some or all of the rent. These sections essentially act as legal defenses for a tenant facing eviction, or a monetary claim, for unpaid rent.

First, section 19 of the Act permits a tenant to deduct an overpayment from rent or otherwise recover the overpayment when a landlord requires, or collects, a security or pet damage deposit in excess of the Act.

Second, section 33(7) of the Act permits a tenant to deduct an amount from rent that the tenant expended on emergency repairs and where the landlord has failed to reimburse the tenant for those expenses. In order to determine whether a tenant has a right to deduct from rent under this section, it is necessary to apply section 33 to the facts.

Third, section 43(5) of the Act states that, where a landlord collects a rent increase that does not comply with the Act (section 43(1)), the tenant may deduct the increase from rent, or otherwise recover the increase.

Fourth, under sections 65(1)(b) and (c), and section 72(2)(a) of the Act, a tenant may deduct an amount from rent when ordered by an arbitrator.

While there appeared to be an oral agreement between the parties whereby the tenant was permitted to live rent-free for January and February 2019, such an agreement is neither valid nor enforceable under the Act. Had the tenant signed a document that would have essentially amended or changed the tenancy agreement's term on rent (that is, the amount and when it is due), then the tenant may have had a right under the Act not to pay the rent.
Section 14 of the Act permits a tenancy agreement to be amended or changed, but both the landlord and the tenant must agree to this change in writing. No such amendment or change occurred in this instance. As such, the tenant was required to pay rent when it was due, despite whatever oral agreement between the parties may have occurred.

Given that the tenant had no legal right under the Act to not pay rent for January or February 2019, I find that he has not paid rent as required by the tenancy agreement.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving the ground on which the first 10 Day Notice was issued.

As the landlords have met their onus of proving the ground (i.e., unpaid rent) on which they issued the first 10 Day Notice, I dismiss the tenant's application for an order cancelling the notice. The first 10 Day Notice, dated January 28, 2019, is therefore upheld and in force.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form. I find the first 10 Day Notice complies with the requirements set out in Section 52.

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 landlord's 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*.

As such, I grant the landlords an order of possession.

Having found that the landlords are entitled to an order of possession based on the first 10 Day Notice, I need not consider the merits or particulars of the second 10 Day Notice, the Two Month Notice, or the issue of whether the tenant filed his application on time.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant the landlords an order of possession, which must be served on the tenant and is effective five (5) days from the date of service. This order may be filed in, 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 Act.

Dated: March 11, 2019

Residential Tenancy Branch