



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNRL-S OPR
 CNR MT OLC

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord. The tenant has applied for more time than prescribed to dispute a notice to end the tenancy; an order cancelling a notice to end the tenancy for unpaid rent or utilities; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the landlord's application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions. No issues with respect to service or delivery of documents or evidence were raised, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the notice(s) to end the tenancy were given in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this fixed term tenancy began on July 3, 2018 and expires on June 30, 2019 thereafter reverting to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$850.00 per month is payable by paying \$425.00 on each of the 1st and 15th days of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite within a 4-plex, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that he served the tenant with 3 notices to end the tenancy and copies have been provided as evidence for this hearing. All of them are 10 Day Notices to End Tenancy for Unpaid Rent or Utilities. The first states that the tenant failed to pay rent in the amount of \$500.00 that was due on February 14, 2019, but is not addressed to any tenant and has no name or address of the landlord. The form has not been completed.

The second states that the tenant failed to pay rent in the amount of \$425.00 that was due on March 1, 2019 and again the form has not been filled in and is not addressed to any tenant.

The third states that the tenant failed to pay rent in the amount of \$425.00 that was due on March 1, 2019 and is addressed to the tenant and filled in with the landlord's name and address, but is not dated or signed by the landlord. The landlord testified that it was taped to the door of the rental unit on March 11, 2019.

The landlord further testified that he has also provided a Proof of Service document and was advised by the Service BC office that it goes together with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, so the form didn't need to be entirely filled out.

The tenant has been consistently late paying rent; 7 payments missed, and 18 out of 20 have been missed or late which has created extra work for the landlord, and the landlord seeks an Order of Possession. Rent for April remains outstanding.

The tenant testified that the dates that rent is due on the tenancy agreement did not match the tenant's paydays, but the tenant will ensure that rent is paid on time.

Analysis

The *Residential Tenancy Act* places the onus on the landlord to establish that any notice to end a tenancy was given in accordance with the *Act*, and that it is in the approved form. A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is a legal document, and a Proof of Service document serves to prove that such a Notice has been served on the tenant in accordance with the *Act*. They are stand-alone documents and a Proof of Service document is not required to be served on the tenant, but may accompany a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for a dispute resolution hearing or application for an Order of Possession by way of the Direct Request Process. The Notice must be completed.

The *Act* also states that a tenant must pay rent when it is due even if the landlord has failed to comply with the law or the tenancy agreement.

In this case, none of the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities has been completed. Each of them is missing crucial information, such as to who the notice is given or by whom. One of the Notices contains that information but is not dated or signed by the landlord.

In the circumstances, I am not satisfied that the landlord has established that any of the Notices were given in accordance with the *Act*, and I cancel all of them, and the tenancy continues. Since the tenancy is continuing, and the tenant has paid the rent referred to in all of the Notices, I decline to grant a monetary order in favour of the landlord or order the landlord to keep any portion of the security deposit. Since the landlord has not been successful with the application, the landlord is not entitled to recovery of the \$100.00 filing fee.

The tenant did not lead any evidence or testimony that the landlord should be ordered to comply with the *Act*, regulation or the tenancy agreement, and I dismiss that portion of the tenant's application.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety.

The Notices to end the tenancy are all cancelled, and the tenancy continues.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

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: April 26, 2019

Residential Tenancy Branch