



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPITAL PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, ERP, MNDCT, RP, RR, FFT
 OPC, FFL

Introduction

This teleconference hearing was scheduled in response to an application by both parties under the *Residential Tenancy Act* (the “Act”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause (the “One Month Notice”), for an Order for the Landlord to complete emergency repairs, for monetary compensation, for an Order for the Landlord to complete regular repairs, and for a reduction in rent due to services, facilities or repairs agreed upon but not provided. The Landlord applied for an Order of Possession based on a One Month Notice. Both parties also applied for the recovery of the filing fee paid for each Application for Dispute Resolution.

The Tenant and two agents for the Landlord (the “Landlord”) were present for the teleconference hearing and were affirmed to be truthful in their testimony. The Tenant stated that he received a registered mail notification card for a package from the Landlords but was unable to pick it up at the post office. The Landlord confirmed that they sent two packages by registered mail to the Tenant which included the Notice of Dispute Resolution Proceeding package and a copy of their evidence. They stated that the registered mail packages were returned as unclaimed. As such, despite not claiming the mail, I find that the Tenant is deemed served in accordance with Section 90 of the *Act*.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding from the Tenant. However, they did not receive any evidence from the Tenant and the Tenant confirmed that he was unaware of the requirement to serve his evidence to the Landlord. As the Tenant’s evidence was not served in accordance with the *Residential Tenancy Branch Rules of Procedure*, the Tenant’s evidence is not accepted and will not be considered in this decision.

Preliminary Matters

At the hearing the agents for the Landlord clarified the corporate name of the Landlord. As agents were named on both applications, this was amended to the corporation name as stated by the agents. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

As stated by rule 2.3 of the *Rules of Procedure*, claims on an application must be related to each other and an arbitrator may exercise their discretion to dismiss unrelated claims. Due to the urgent nature of a dispute over a One Month Notice and a claim for emergency repairs, the hearing continued on the basis of these claims only. The remainder of the Tenant's claims are dismissed, with leave to reapply.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Landlord be ordered to complete emergency repairs?

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

Background and Evidence

The Landlord testified that they are unsure of the start date of the tenancy due to a previous property manager making the arrangements for the tenancy without notifying the Landlord. However, they stated that they first became aware of the tenancy in November 2018. The Landlord stated that rent is \$1,095.00 due on the first day of each month. They were unsure whether a security deposit was paid. They submitted a tenancy agreement into evidence which states that the tenancy began on August 1, 2018. The Landlord did not present testimony regarding the tenancy agreement, so it is unclear as to whether it was signed by the previous manager. The Landlord stated that they did not sign a new tenancy agreement with the Tenant once they became aware of the tenancy in November 2018.

The Tenant stated that the tenancy began on June 1, 2018 and that monthly rent in the amount of \$1,035.00 is due on the first day of each month. The Tenant stated that he paid both a security deposit and pet damage deposit at the start of the tenancy.

The Landlord testified that they served the Tenant with a One Month Notice on March 4, 2019 by posting the notice on the Tenant's door. The One Month Notice was submitted into evidence and the details on the second page are difficult to read due to the quality of the copy submitted. However, the Landlord testified that the main reason for the One Month Notice was due to repeated late payment of rent and it is evident that this is one of the reasons checked off on the second page of the One Month Notice. The effective end of tenancy date of the One Month Notice was stated as March 31, 2019.

The Landlord stated that the Tenant paid rent on November 6, 2018, December 4, 2018, January 19, 2019, February 9, 2019 and March 14, 2019. They also noted that no rent has been paid for April and May 2019. The Landlord submitted copies of text message communication with the Tenant regarding their requests for the rent payment. They also submitted copies of e-transfer payment confirmation which confirm the rent payment dates as stated by the Landlord.

The Tenant did not dispute that he paid rent late for November, December, January, February and March. He stated that he was away from November 2018 to January 2019 which made paying rent on time difficult. The Tenant stated that he pays rent in cash or by e-transfer. The Tenant was also in agreement that he did not pay rent for April or May 2019 due to repairs needed in the rental unit.

The Landlord also testified as to additional reasons for the One Month Notice including that the Tenant did not follow through on their request to clean up the rental unit before they would be able to attend to complete requested repairs.

Regarding the Tenant's claim for emergency repairs, he testified that there was an issue with the kitchen sink that has since been repaired, but that repairs in the bathroom have not been completed. The Tenant testified that there are holes in the bathroom tiles surrounding the bathtub as well as issues with the caulking throughout the bathroom which have led to the presence of bugs in the rental unit. The Tenant stated that he has notified the Landlord of the issue many times through email and text message.

Analysis

Section 47(4) of the *Act* states that a tenant has 10 days in which to dispute a One Month Notice. As the notice was posted on the Tenant's door on March 4, 2019 and in

absence of information confirming the exact date the notice was received, I refer to the deeming provisions of Section 90 of the *Act* which state that a document is deemed received 3 days after posting on the door. Therefore, the Tenant is deemed to have received the One Month Notice on March 7, 2019 and he applied for dispute resolution on March 15, 2019, within the 10 days allowable.

However, despite applying to dispute the notice in time, I find that the Tenant did not dispute that rent has been paid late from November 2018 until March 2019. Therefore, I find that the Landlord had cause to serve the Tenant with the One Month Notice for repeated late payment of rent in accordance with Section 47(1)(b) of the *Act*.

While the parties were not in agreement as to some of the details of the tenancy given the manner in which the tenancy began, the parties did agree that rent is due on the first day of the month. The parties were also in agreement that rent has been paid late since November 2018.

As stated in *Residential Tenancy Policy Guideline 38*, three payments of rent are the minimum number to be considered "repeated". This policy guideline also notes that exceptional circumstances may be considered such as a bank error that led to late rent payment. Although the Tenant provided testimony that it was difficult to pay rent during a period when he was away, I do not find this to be a valid reason to not pay rent as due.

Section 26 of the *Act* states that rent must be paid as due and being out of town does not mean that this section of the *Act* no longer applies. Therefore, I do not find sufficient evidence to establish that there were exceptional circumstances that led the Tenant to pay rent late for November and December 2018, as well as January, February and March 2019 or to not pay rent at all for April and May 2019.

As such, I find that the One Month Notice is valid based on repeated late payment of rent as a reason for the notice. Although the Landlord provided other reasons on the One Month Notice, I do not find it necessary to consider the merits of those reasons given that I have found the One Month Notice is valid based on the reason of repeated late payment of rent.

Therefore, the Tenant's application to cancel the One Month Notice is dismissed without leave to reapply. Accordingly, as I find that the form and content of the notice comply with Section 52 of the *Act*, pursuant to Section 55(1) I find that the Landlord is entitled to an Order of Possession. As the effective date of the One Month Notice has passed, I award the Landlord a two-day Order of Possession.

As the Landlord was successful with their application, pursuant to Section 72 of the *Act* I award the Landlord the recovery of the filing fee in the amount of \$100.00.

As for the Tenant's claims for emergency repairs, Section 33 of the *Act* provides the following definition for emergency repairs:

- 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.

Based on the testimony of both parties, I do not find that the repair issues described in the bathroom fit the definition of an emergency repair as defined above. Therefore, I decline to make any emergency repair orders and the Tenant's claims are dismissed, without leave to reapply.

Conclusion

The Tenant's application is dismissed, without leave to reapply.

I grant an Order of Possession to the Landlord 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 Landlord a **Monetary Order** in the amount of **\$100.00** for the recovery of the filing fee paid for the Application for Dispute Resolution. The Landlord is 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: May 08, 2019

Residential Tenancy Branch