



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE SERVICE INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR ERP OLC RP RR

Introduction

This hearing was convened pursuant to the Tenant's Application for Dispute Resolution made on April 15, 2019, and amended on April 17, 2019 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 8, 2019 (the "10 Day Notice");
- an order that the Landlord make emergency repairs for health or safety reasons;
- an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement;
- an order that the Landlord make repairs to the unit, site, or property; and
- an order reducing rent for repairs, services or facilities agreed upon but not provided.

The Tenant attended the hearing and provided affirmed testimony. The Landlord was represented at the hearing by G.C., who was accompanied by C.T. and R.C., witnesses. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Tenant testified that the Application package was served on the Landlord by registered mail on April 17, 2019. G.C. acknowledged receipt on behalf of the Landlord. Further, G.C. testified that Landlord's documentary evidence was served on the Tenant in person on April 24, 2019. The Tenant acknowledged receipt.

No issues were raised during the hearing concerning service or receipt of the above documents. The parties were in attendance or were represented at the hearing, and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full 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, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. In this case, the most important issue to address is whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's request for an order cancelling the 10 Day Notice, with leave to reapply for the remainder of the relief sought as appropriate.

Issue to be Decided

Is the Tenant entitled to an order cancelling the 10 Day Notice?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirms the fixed-term tenancy began on March 20, 2019, and was expected to continue to March 31, 2020. Rent in the amount of \$1,200.00 per month is due on or before the first calendar day of each month. The Tenant paid a security deposit of \$600.00, which the Landlord holds.

The Landlord testified the Tenant did not pay rent when due on April 1, 2019. Accordingly, the Landlord issued the 10 Day Notice. The 10 Day Notice indicates that, at that time, rent in the amount of \$1,200.00 was outstanding. The 10 Day Notice indicates it was served on the Tenant in person on April 9, 2019, and the Tenant acknowledged receipt on that date. A copy of the 10 Day Notice was submitted into evidence.

In addition, the Landlord testified rent was not paid when due on May 1, 2019, and that rent in the amount of \$2,400.00 is outstanding, although the Tenant continues to occupy the rental unit.

In reply, the Tenant did not dispute that rent was not paid as alleged. However, the Tenant provided multiple reasons for failing to pay rent. She testified that rent was not paid initially because her employer paid her late. In addition, the Tenant testified she has been harassed and intimidated by an agent of the Landlord who demanded payment of rent and threatened dispute resolution proceedings. Further, the Tenant testified that her phone was broken and that she was initially unable to contact the Landlord to make arrangements. The Tenant also testified that an agent of the Landlord fraudulently contacted her benefits provider and interfered with her payments. Finally, the Tenant testified that she lives with a panic disorder and a heart condition.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the *Act* confirms:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[Reproduced as written.]

In this case, I find that the 10 Day Notice was served on and received by the Tenant on April 9, 2019. Further, G.C. testified and the Tenant acknowledged that rent was not paid when due on April 1 and May 1, 2019. The reasons provided by the Tenant for failing to pay rent when due are rejected and do not give rise to a right for the Tenant to withhold rent. Therefore, I find the Tenant's Application to cancel the 10 Day Notice is dismissed, without leave to reapply.

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 One Month 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 Tenant.

Conclusion

The Tenant's Application to cancel the 10 Day Notice is dismissed, without leave to reapply. As noted under Preliminary and Procedural Matters, above, the Tenant is granted leave to reapply for the remainder of the relief sought, as appropriate.

By operation of section 55 of the *Act*, I grant the Landlord an order of possession. The order will be effective two (2) days after it is served on the Tenant. The 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 *Residential Tenancy Act*.

Dated: May 9, 2019

Residential Tenancy Branch