



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACE REALTY CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RP, RR

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued by the landlord, for an order requiring the landlord to make repairs to the rental unit, and for an order allowing a reduction in rent.

The tenant and the landlord's agents, hereafter "landlord", attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary and digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary matter- The tenant originally filed her application seeking an order allowing a reduction in rent and an order requiring the landlord to make repairs to the rental unit.

Thereafter, the tenant was served with the Notice by the landlord and the tenant amended her application to include a request for an order cancelling the Notice.

I have determined, and the tenant was informed, that the portion of the tenant's application dealing with a request for an order for the landlord and a rent reduction is unrelated to the primary issue of disputing or enforcing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's Application and the hearing proceeded on the tenant's request to cancel the Notice. A determination of the remaining portion of the tenant's application will be made at the conclusion of this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice?

Background and Evidence

The written tenancy agreement entered into evidence shows that this tenancy began on October 1, 2015, for a monthly rent of \$900.00 and a security deposit of \$450.00 paid by the tenant.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain and support their Notice.

The landlord submitted that the Notice, dated May 6, 2019, was served on the tenant on May 8, 2019, by leaving the Notice in the tenant's mailbox, listing an unpaid rent deficiency of \$218.44 owed as of May 1, 2019. The effective move-out date listed was April 18, 2019. The tenant submitted the Notice into evidence.

The landlord asserted that since the issuance of the Notice, they have not received rent from the tenant, including the rent for June 2019.

The landlord explained that although the listed monthly rent on the written tenancy agreement was \$900.00, the tenant had habitually paid \$100.00 less each month. The landlord submitted that the monthly rent of \$900.00 was increased to \$936.00, effective November 1, 2018, by virtue of a notice of rent increase being given to the tenant on July 31, 2018. Since that time, the tenant has been paying monthly rent of \$836.00.

The landlord acknowledged that the tenant believed she was entitled to reduce the monthly rent by \$100.00, by virtue of an agreement with the former property managers, with consent from the owner of the residential property.

Since they have taken over from the former property managers, the owner has withdrawn that consent, according to the landlord. The landlord submitted a written statement from the owner who acknowledged that the original consent to the \$100.00 deduction, but explained it was due to a hard winter locally, resulting in condensation to the rear bedroom. The property manager at the time suggested that as a goodwill gesture, the monthly rent should be reduced to deal with a possible leaky roof.

The owner wrote further that the issue was dealt with, as it turned out to be a ventilation issue. The owner wrote further that as any issues with the rental unit were resolved, the monthly rent should be restored to the agreed upon amount listed on the written tenancy agreement, along with the rent increase of \$36.00.

The landlord submitted that they served the tenant a written notice on April 15, 2019, informing the tenant that they would no longer accept the amount of \$836.00, as the verbal agreement with the landlord was to conclude on April 30, 2019. The written notice reminded the tenant monthly rent was \$936.00, beginning May 1, 2019. The landlord provided a copy of the written notice along with a confirmation of service of the written notice. The landlord submitted further that the tenant had been informed otherwise that the verbal agreement had concluded.

The landlord submitted that although the tenant should have been paying the full rent earlier, the owner was willing to start fresh in May 2019, with the full rent being paid.

In response to my inquiry, the landlord submitted that in addition to the rent deficiency of \$100.00 for May 2019, the additional amount listed on the Notice, \$118.00, was a deduction of that amount the tenant made in March 2019, for locksmith services. The landlord denied that the lock was of an emergency nature, as shown by the statement from the locksmith, stating nothing was wrong with the lock to the rental unit.

Tenant's response-

The tenant confirmed receiving the Notice on May 10, 2019.

The tenant confirmed that she has been making deductions of \$100.00, including for May 2019, and that she was entitled to do so because of the verbal contract she had with the former property manager.

The tenant submitted that none of the repairs had been made and that she remains entitled to make the \$100.00 deductions as the owner has not responsive to her requests for repairs.

The tenant submitted further that since early in the tenancy, she has made multiple requests for repairs and as the landlord failed to make the repairs. The tenant submitted further that she cannot afford her hydro bills due to the large increase.

The tenant confirmed not paying rent for June 2019, as she was waiting for her debit card to arrive.

The tenant's additional evidence included copies of her hydro bills.

Analysis

The Notice is not effective earlier than ten days after the date the tenant received it. In this case, the tenant confirmed receiving the Notice on May 10, 2019. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the listed effective date of April 18, 2019, on the Notice, is changed to May 20, 2019.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days. As the tenant filed her amendment in dispute of the Notice on May 13, 2019, I find that she applied within the required time limit.

When a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

In this case, I relied on the owner's written statement to find the owner had previously given consent for the monthly deductions of \$100.00, but that he had withdrawn that consent, effective no later than April 30, 2019. I further find the tenant was given written warning on April 15, 2019, and was well aware that the owner had withdrawn the consent. The undisputed evidence further shows that the tenant was informed the monthly rent was being restored to the original amount under the written tenancy agreement, plus the rent increase.

The purpose of a written tenancy agreement is to communicate to the parties the terms and conditions of the tenancy, which are then enforceable.

Upon hearing from the parties and based upon the above, I find that the tenant owed the landlord rent of \$936.00 when the Notice was issued and that she did not pay all of the rent owed to the landlord within five days of receiving the Notice.

I make no finding as to whether or not the locksmith charge was an emergency repair as defined by the Act, as that issue was not relevant to my decision.

I therefore find that the tenant did not establish that she had the legal right to withhold the rent owed.

I therefore find the landlord submitted sufficient evidence to support the Notice. As such, I find the tenancy has ended for the tenant's failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I dismiss the tenant's application seeking cancellation of the Notice.

As such, I find that the landlord is entitled to and I therefore grant them an order of possession for the rental unit effective 2 days after service upon the tenant, pursuant to section 55(1)(b) of the Act. The order of possession is attached with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon her, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is advised that costs of such enforcement are recoverable from the tenant.

As I have dismissed the tenant's application seeking cancellation of the Notice and issued the landlord an order of possession, I likewise dismiss the remaining portion of

the tenant's application for an order for a rent reduction and for repairs to the rental unit, as the tenancy is ending.

Conclusion

The tenant's application is dismissed, without leave to reapply, for the reasons given.

The landlord has been issued an order of possession for the rental unit, effective 2 days after it has been served on the tenant.

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: June 6, 2019

Residential Tenancy Branch