



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNR, ERP, OLC, RR
Landlord: OPRM-DR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Tenant’s Application for Dispute Resolution was made on May 7, 2019 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- to cancel a 10 Day Notice for unpaid rent;
- an order for emergency repairs;
- an order that the Landlord comply with the *Act*; and
- an order granting a rent reduction.

The Landlord’s Application for Dispute Resolution was made on May 14, 2019, (the “Landlord’s Application”). The Landlord initially applied through the Direct Request process; however, since the Tenant had already filed to dispute the 10 Day Notice to End Tenancy, the Landlord’s Application was scheduled to be heard with the Tenant’s Application. The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

The Tenant, the Tenant’s representative S.K., as well as the Landlord attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenant testified that she served her Application and documentary evidence package to the Landlord by registered mail on May 13, 2019. The Landlord confirmed receipt of the Application; however, states that he did not receive the Tenant’s evidence. The Landlord testified that he still wished to continue with the hearing despite not having received the Tenant’s evidence. The Landlord testified that he served the Tenant with

his documentary evidence by registered mail on May 17, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a tenant submits an Application 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 has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent.

The Tenant's request for emergency repairs, an order that the Landlord comply with the *Act*, and an order granting a rent reduction are dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated May 3, 2019, pursuant to Section 46 of the *Act*?
2. Is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?

3. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
4. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on November 15, 2018. The Tenant currently pays rent in the amount of \$800.00 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$400.00 which the Landlord continues to hold.

The Landlord testified that the Tenant did not pay rent in full in May 2019. The Landlord stated that he subsequently issued a 10 Day Notice for unpaid rent in the amount of \$800.00, dated May 3, 2019, with an effective vacancy date of May 12, 2019.

The Landlord stated that he served the 10 Day Notice by posting it on the Tenant's door on May 3, 2019. The Landlord submitted a proof of service form in support. The Tenant confirmed receipt on the same day. The Landlord testified that the Tenant has also failed to pay rent in full for June 2019. The parties agreed that the Tenant has not made any payments towards the unpaid rent since receiving the 10 Day Notice. The Landlord is currently seeking a monetary order in the amount of \$1,600.00 in unpaid rent for May and June 2019. The Landlord is also seeking an order of possession for unpaid rent.

The Tenant testified that she has withheld paying the Landlord rent for May and June 2019 as the Landlord has not provided the Tenant with heat. The Tenant further stated that there are no windows and there is mould in the rental unit. As a result, the Tenant stated she felt justified in withholding the rent until the Landlord addresses her concerns.

Analysis

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

Section 46 of the Act states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The Landlord served the Tenant with the 10 Day Notice dated May 3, 2019 with an effective vacancy date of May 12, 2019, by posting it to the Tenant's door on May 3, 2019. Section 53 of the Act, allows incorrect effective dates to autocorrect. I find that the 10 Day Notice provided by the Landlord to the Tenant on May 3, 2019, should have the incorrect effective date corrected to May 13, 2019. The Tenant confirmed receipt of the 10 Day Notice on May 3, 2019, therefore I find the 10 Day Notice sufficiently served pursuant to Section 88 of the Act.

Section 46(4) says that within 5 days after receiving a notice under this section, the Tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until May 8, 2019 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept that the Tenant made an Application to dispute the 10 Day Notice on May 7, 2019 within the time limit set out in the Act. The Tenant acknowledged that she has failed to pay rent to the Landlord for May and June 2019 in the amount of \$1,600.00. The Tenant stated that she felt justified in withholding the rent until the Landlord addressed some of her concerns.

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Pursuant to Section 26 of the Act, I find that the Tenant did not have a right to withhold rent due to concerns she had during her tenancy. I find that the Tenant should have paid the rent in full when due to the Landlord and applied for Dispute Resolution to address her concerns if she felt that the Landlord was not complying with the *Act*.

In light of the above, I dismiss the Tenant's Application to cancel the 10 Day Notice dated May 3, 2019 without leave to reapply.

Section 55 of the *Act* requires that when a tenant submits an Application 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 has issued a notice to end tenancy that is compliant with the *Act*.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$1,600.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. The Landlord indicated during the hearing that he does not wish to apply the security deposit to his monetary claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$1,700.00.

Conclusion

The Tenant breached the tenancy agreement by not paying rent when due.

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$1,700.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 20, 2019

Residential Tenancy Branch