



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, RP, OPRM-DR & FFL

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy dated June 3, 2019
- b. An order that the landlord comply with the Act, regulation and/or the tenancy agreement
- c. An order that the landlord make repairs to the unit, site or property

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$1500 for unpaid rent

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the 10 day Notice to End Tenancy was served on the Tenant by posting on June 3, 2019. Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by the Tenant was sufficiently served on the landlord by e-mail as the landlords acknowledged they received it. The landlord made a Direct Request Application. However, it was denied presumably because the tenant had disputed the Notice to End Tenancy. The landlord testified that they did not serve their Application for Dispute Resolution on the Tenant. With respect to each of the applicant's claims I find as follows:

Preliminary Matter:

Rule 2.3 of the Rules of Procedure provide as follows

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I determined the Tenant's claims for an order that the landlord comply with the Act, Regulations and or tenancy agreement and for a repair order are not related to the Tenant's application to cancel the Notice to End Tenancy and as a result I dismissed those claims with leave to re-apply.

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated June 3, 2019?
- b. Whether the landlord is entitled to an Order for Possession?
- c. Whether the landlord is entitled to A Monetary Order and if so how much?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on November 1, 2018 and continue on a month to month basis. The rent was \$1500 per month. The tenant did not pay a security deposit.

The tenants failed to pay the rent when due on June 1, 2019. The tenant texted the landlord advising she had \$1000 of the rent. The landlord said she would pick the part payment up but failed to show. The next day the tenant was advised by the landlord that they would not pick up the rent until she had the full rent.

The landlord served a 10 day Notice to End Tenancy on the Tenant on June 3, 2019.

The tenant advised the landlord that she and her co tenant got into a dispute and that he vacated the rental unit. She has a no contact order with him. She suggested to the landlord that the landlord should collect \$500 from the co-tenant. The landlord responded saying that they were not prepared to chase the tenants individually and that the full rent was due.

On June 16, 2019 the tenant sent an e-mail transfer of \$850 to the landlord as part payment of the rent for June.

On June 20, the tenant sent an e-mail transfer of \$150 to the landlord as a further part payment.

On June 26, 2019 the tenant sent an e-mail transfer of \$750 to the landlord with a notation part payment of the rent for July.

The landlord testified he received an e-mail transfer in the sum of \$300 and another one in the sum of \$450 for a total of \$750 being the rent for July.

The landlord testified he has not deposited those transfers into his account.

Tenant's Application:

Policy Guideline 13 includes the following:

“Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.”

I do not accept the submission of the Tenant that the landlords are responsible to collect part amounts of the rent from each of the Tenants. The landlord can recover the full amount of the rent from all or any one of the Tenants. This further means that the landlord can take steps to end the tenancy even where one tenant pays her/his share of the rent and the other tenant does not pay her/his share of the rent.

I determined that at the time the landlord served the 10 day Notice to End Tenancy the tenants owed \$1500 in outstanding rent. The Act provides that where a 10 day Notice is served the Tenants have days to pay the full rent in which case the Notice to End Tenancy is void. However, if the tenants fail to pay the arrears within the 5 day period but pay later the landlord has an election to make. The landlords can accept the payment(s) and reinstate the tenancy or alternatively the landlords take the payment “for use and occupation only” and require that tenancy must come to an end and the tenant must end at the end of the month.

In this case the Notice to End Tenancy was served by posting on June 3, 2019. It is deemed received 3 days later because it was posted. The tenant failed to pay the rent within the 5 days that would void the Notice to End Tenancy. The tenant has subsequently tendered the rent for July in part payments but the landlord has refused to accept the tender as it is outside of the 5 day period. I determined the landlords have not reinstated the tenancy.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlords have established sufficient cause to end the tenancy. There is still \$500 in rent owed for June. Even if the payment of the July rent was partially applied to the outstanding rent for June the tenant failed to pay the rent within the 5 days that would void the Notice to End Tenancy. The landlords have not reinstated the tenancy. The landlords used the approved government form. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall come to an end.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. The landlords used the approved government form. As a result I granted the landlord an Order for Possession. I determined the landlord was entitled to an Order of Possession effective July 31, 2019. The landlords stated they were prepared to give the tenant an extension of time to the end of August to find alternative accommodation provided the rent was paid for August. That is up to the parties to work out should the Tenant wished to have such an extension.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Landlords' Claim:

I dismissed the landlord's claim for a monetary order with liberty to re-apply as the landlord failed to present sufficient evidence as to service of the Application for Dispute Resolution. Further, it is unclear exactly how much of the arrears have been paid.

Conclusion:

I ordered that the tenant's claim that the landlord comply with the Act, regulations and/or tenancy agreement and for a repair order be dismissed with liberty to reapply. I dismissed the tenant's application for an order to cancel the 10 day Notice to End Tenancy and I granted an Order of Possession effective July 31, 2019.

I dismissed the landlord's application with liberty to re-apply.

This decision is final and binding on the parties.

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: July 26, 2019

Residential Tenancy Branch