



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRSTSERVICE RESIDENTIAL and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *CNR, MNSD, OLC, FF*

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for nonpayment of rent, for an order directing the landlord to comply with the *Act*, and for a monetary order for loss under the *Act*.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants represented themselves. The landlord was represented by their agents.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.

In this regard I find the tenant has applied for an order for the landlord to comply with the *Act* and for a monetary order for compensation. As these sections of the tenant's application are unrelated to the main section which is to cancel the 10-day notice, I dismiss these sections of the tenants' claim with leave to reapply.

Accordingly this hearing only dealt with the tenants' application to set aside the notice to end tenancy.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began in August 2015. The monthly rent is \$1,401.00 payable on the first of each month. On June 17, 2019, the landlord served the tenant with a 10-day notice to end tenancy for non-payment of rent in the amount of \$215.00. The tenant disputed the notice in a timely manner.

The landlord testified that the tenant failed to pay rent that was due on July 01, 2019 and August 01, 2019. The tenant agreed that she did not pay \$215.00 and rent for August 2019 but stated that she paid rent for July 2019 and had proof of payment. The tenant testified that she did not file any proof of payment into evidence.

As the hearing proceeded, the tenant became increasingly agitated, started to speak in a loud and aggressive manner and signed off the hearing by conference call, prior to the completion of the hearing.

The landlord requested an order of possession effective September 30, 2019.

Analysis

Based on the sworn testimony of both parties, I find that the tenant is deemed to have received the notice to end tenancy for unpaid rent, on June 22, 2019 and applied to dispute the notice within the legislated time frame of five days. Even though the tenant made application to dispute the notice to end tenancy within five days, I must uphold the notice because the tenant did not pay outstanding rent within five days of receiving the notice to end tenancy and the time to do so has expired. In addition the tenant also agreed to not having paid rent that was due on August 01, 2019.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy, on the date set out in the notice and must vacate the rental unit by that date. Accordingly, the notice to end tenancy is upheld and therefore the tenant's application to cancel the notice is dismissed.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession effective September 30, 2019.

Section 55 of the *Residential Tenancy Act* addresses an order of possession for the landlord and states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I find that the landlord served the tenant with a notice to end tenancy that complies with section 52 (form and content of notice to end tenancy). Since the tenant did not pay rent within five days of receiving the notice and still owes rent at the time of this hearing, I have dismissed the tenant's application for dispute resolution and have upheld the notice to end tenancy.

Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective by **1:00pm on September 30, 2019**.

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: August 22, 2019

Residential Tenancy Branch