



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, FF

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the 10 day Notice to End Tenancy dated June 11, 2019
- b. An order to cancel the 10 day Notice to End Tenancy dated July 2, 2019.
- c. A monetary order in the sum of \$5000.

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.

Neither party produced a copy of the June 11, 2019 Notice to End Tenancy. However both agree that it was served. The tenant acknowledged that the June 11, 2019 was served by posting and that she received a copy of that Notice on June 13, 2019. I find that the 10 Notice to End Tenancy dated July 2, 2019 was personally served on the Tenant.

I find that the Application for Dispute Resolution filed by the Tenant was personally served on the landlord on June 18, 2019. I find that that the Amendment to Application for Dispute Resolution/Notice of Hearing was served on the landlord sometime in the middle of July.

Preliminary Matter:

Rule 2.3 provides 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 it was appropriate to consider the Tenant's application to cancel the 10 day Notice to End Tenancy dated June 11, 2019 and July 2, 2019 as both relate to non-payment of rent. However, the tenant's monetary claim of \$5000 raised in the Amendment that she filed is not related to the issue of rent. As a result I ordered that the Tenant's claim for a monetary order be dismissed with liberty to re-apply.

Issues 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 11, 2019?
- b. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated July 2, 2019?

Background and Evidence:

The tenancy began on February 4, 2018. The tenant testified the agreement is oral and it provided that the tenant pay to the landlord the sum of \$3200 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$1600 and a pet damage deposit of \$1600 at the start of the tenancy.

The tenant testified she paid the first and last month rent at the time she took possession. The landlord denies that the tenant paid the last month rent. The tenant testified she has a receipt but she failed to provide that with the materials she provided the Branch or gave to the landlord. The tenant is in ill health and bedridden. She was not able to locate that receipt to provide particulars in the hearing.

The landlord testified the tenant failed to pay the rent for the months of May 2019 (\$3200 is owed), June 2019 (\$3200 is owed) and July 2019 (\$3200 is owed). The tenant has not paid the rent that is due on August 1 2019. The tenant acknowledges she failed to pay this rent. However, she testified the landlord failed to make required repairs and she is entitled to a reduction of rent.

Analysis:

After carefully considering all of the evidence I determined there is no basis for an order to cancel the two 10 day Notices to End Tenancy for the following reasons:

- The tenant failed to prove sufficient evidence to prove that she paid the first and last month rent at the time she moved into the rental unit. Even if it was true the tenant still owed the rent for June 2019 and July 2019 based on the Tenant's own evidence.
- The tenant does not have a legal right to withhold the rent until she has first obtained an order from an arbitrator permitting her to do this. Section 26(1) of the Act provides as follows:

Rules about payment and non-payment of rent

26 (1) 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.

- The failure to pay the rent because of the landlord's failure to make repairs is not a sufficient reason to withhold the rent unless the tenant has obtained a monetary order from an arbitrator for the reduced value of the tenancy.
- The landlord has used the approved government form.
- There is outstanding rent.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. There is outstanding rent. The tenant failed to prove she was entitled to withhold the payment of the rent. The approved government form was used. As a result I dismissed the tenant's application to cancel the two 10 day Notices to End Tenancy. I order that the tenancy shall end.

One witness was going to testify about the tenant's monetary claim and the second witness was going to testify about the need for repairs. I determined that it was not appropriate to hear the testimony of these witnesses as their evidence was not relevant to the issue of non payment of rent.

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. As a result I granted the landlord an Order for Possession.

An arbitrator has discretion as to when to set the effective date of the Order of Possession. The landlord testified they have been more that accommodating with the tenant but they are facing significant financial pressure from the mortgage company and they sought an Order of Possession as quickly as possible. The tenant testified she is in ill health. She has been in and out of hospital several times in the last month. She is bedridden and in on oxygen. She will need assistance to move. In the circumstances I determined that it was appropriate to set the effective date of the Order of Possession for August 15, 2019.

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.

Conclusion:

I dismissed the tenant's claim to cancel the two 10 day Notices to End Tenancy and I issued an Order of Possession effective August 15, 2019. I dismissed the Tenant's claim for a monetary order 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: August 01, 2019

Residential Tenancy Branch