



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, AAT, LRE, OLC, PSF, RP, ERP, RR, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order allowing access to the unit - Section 70;
3. An Order restricting the Landlord’s right of entry - Section 70;
4. An Order for the Landlord to comply - Section 62;
5. An Order for the provision of services and facilities - Section 65;
6. An Order for emergency and other repairs - Section 32;
7. An Order for a rent reduction - Section 65;
8. A Monetary Order for compensation - Section 67; and
9. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy and recovery of the filing fee?

Is the Landlord entitled to an order of possession?

Is the Tenant entitled to orders in relation to the remaining claims?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on June 1, 2018. At the outset of the tenancy the Landlord collected \$2,250.00 as a security

deposit. Rent of \$4,500.00 is payable on the first day of each month. On July 2, 2019 the Landlord served the Tenant in person with a 10-day notice to end tenancy for unpaid rent (the "Notice"). The Notice is set out on a Residential Tenancy Branch (the "RTB") form, is signed by the Landlord and is dated July 2, 2019. The Notice sets out the rental address, an effective date of July 12, 2019 and unpaid rent of \$6,000.00 due July 2, 2019. The amount of unpaid rent is comprised of rental arrears of \$1,500.00 for June 2019 and unpaid rent of \$4,500.00 for July 2019. The Tenant has not paid the rent for August or September 2019 and has not moved out of the unit.

The Tenant states that financial difficulties prevented the Tenant from paying rent on time and that the Landlord's agent agreed that the Tenant could pay rent on July 2, 2019. The Tenant states that this agreement was recorded on text messages however the Tenant did not provide any evidence of text messages for this dispute. The Tenant states that the outstanding rent was ready to be paid on July 2, 2019 but that at 9:00 p.m. on that date the Landlord served the Tenant with the Notice. The Tenant states that the Landlord only informed the Tenant that the Notice was for late payment of rent. The Tenant states that on July 21, 2019 the Tenant attempted to pay the outstanding rent however the agent refused to accept the rent. The Tenant states that her father is aged, and her brother has cancer. The Tenant states that as a result the Tenant requires at least 30 days to move out of the unit.

The Landlord states that there was no agreement with the Tenant to pay the rent late. The Landlord asks for an order of possession to be effective on September 11 or 12, 2019.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Section 46(1) of the Act provides that 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. Given the tenancy agreement requiring the payment of rent on the first of July 2019, the Landlord's evidence of no agreement for a later rent payment in July 2019 and as there is no evidence of any written agreement to pay the rent late I find on a balance of probabilities that the Tenant was required to pay the rent on July 1, 2019. Even if there was an agreement to pay the rent a day later, the Tenant gave evidence only that the rent was not paid a day later. As the Tenant has not provided evidence of any valid reason why the rent was not paid as required, and I consider that financial difficulties are not a valid reason for not paying rent, I find that the Notice is valid, and I dismiss the claim to cancel the Notice. The Tenant must move out of the unit as required by the Landlord. As the Tenant has not been successful with this claim I dismiss the claim for recovery of the filing fee. As the tenancy is no longer continuing I dismiss the claims in relation to repairs, entry, access to the unit, provision of facilities and services, and a rent reduction.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Considering that the required form and content is contained on the Notice and given the finding that the Notice is valid, I find that the Landlord must be given an order of possession. Considering the Tenant's circumstances and the Landlord's two dates for the order of possession, I make this order effective for the later date of September 12, 2019.

Rule 2.3 of the RTB Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. The Tenant confirms that the remaining claim for compensation is in relation to claims of the Landlord's breaches of the Act or tenancy agreement. As this claim is not related to the primary matter of where the tenancy would continue, I dismiss this claim with leave to reapply.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on September 12, 2019. The Tenant must be served with this **Order of Possession**. 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.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: September 06, 2019

Residential Tenancy Branch