



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR MNR

Tenant: CNR LRE PSF RP

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on November 18, 2019.

The Landlord was present, along with her translator, N.M., and a witness, J.N. (collectively referred to as the Landlord). The Tenant had an agent present on her behalf (referred to as the Tenant). All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

Both parties confirmed receipt of each others' applications and evidence. Neither party took issue with the service of these packages. I find both parties sufficiently served each other with their application and evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matter #1

The Tenant provided some testimony. However, after a couple of minutes, it became apparent she was on speaker phone, and had other people present for the hearing. At the beginning of the hearing, I tried to identify everyone who was present on the call, and the Tenant's agent stated it was just her. This was clearly false, as a matter of minutes later, other people began speaking up in the background, on behalf of the Tenant. At this point, I asked the Tenant to identify who all was present and who was providing

statements. I warned her that she either needed to identify who was present, or disconnect the unnamed parties. The Tenant chose to hang up all parties present for the Tenant, rather than identify who all was there on behalf of the Tenant. Despite being given 5 minutes to reconnect, no party for the Tenant re-appeared, so the hearing proceeded with the Landlord only.

Preliminary and Procedural Matter #2

Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”), a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in both applications deal with whether or not the tenancy is ending due to unpaid rent and whether or not the Landlord is entitled to a monetary order for the unpaid rent. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Tenant’s application with the exception of the following ground:

- to cancel a 10-Day End Tenancy for unpaid rent or utilities (the “Notice”).

Further, since the issues that the Landlord has cross-applied for all relate to the 10-Day Notice, the end of the tenancy, and rent owed, at the outset of the hearing I made it clear that I would consider them in this hearing.

The Landlord has requested to amend her application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I hereby amend the Landlord’s application accordingly.

Issues to be Decided

- Should the 10 Day Notice to End Tenancy be cancelled?
 - If not, is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

Both parties agreed that monthly rent is \$2,800.00 and was due on the first of the month. The Landlord holds a security deposit in the amount of \$1,400.00.

The Landlord testified that the Tenant stopped paying rent a couple of months ago, and no rent has been paid, at all, for September, October, or November 2019. The Landlord stated that there are multiple unauthorized people living in the rental unit, and there are still people coming and going, as recently as yesterday. The Landlord had a witness present, who lives in the adjacent unit, and he stated that he saw them there yesterday.

The Tenant stated that they have already moved out, and before being able to explain this further, she disconnected, and did not reconnect.

The Tenant stated that she thought rent was paid, and that one of the people staying there had paid. The Tenant stated that she had “proof” of payment, but she did not explain what this proof is, nor was she able to locate any of it. The Landlord stated that there is no proof because rent was not paid, and this is merely a game for the Tenant. The Tenant stated “as far as I know” rent was paid by one of the occupants. However, she did not elaborate on this matter.

The Tenant testified that she received the 10 Day Notice on October 3, 2019. This Notice was issued due to unpaid rent for September and October, totalling \$5,600.00. Although now the total is \$8,400.00, including November 2019 rent.

Analysis

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

I note that the Tenant acknowledged receipt of the 10 Day Notice on October 3, 2019. The Tenant filed to dispute the Notice, but did not present any consistent or compelling

evidence that she either paid rent, or had the authority to withhold rent. The Tenant's statements on her payment of rent were extremely vague and unsupported. I found the Landlord's testimony to be clear and compelling, and I have placed more weight on these statements. I find it more likely than not that the Tenant failed to pay any rent for September, October, and November 2019.

Further, I note the Tenant stated that they moved out by the beginning of November. However, I note the Tenant did not further explain this matter, or speak to why another person (present at the hearing as a witness) saw the Tenant (or occupants) there as recently as yesterday. I find it more likely than not that the Tenant or occupant was still in the unit as recently as yesterday, and they may still be there.

At this point the Landlord is still seeking an order of possession, because he is not sure if the Tenant has actually moved out.

After reviewing the totality of evidence and testimony, I find that the Tenant owed past due rent in the amount of \$5,400.00 for September and October 2019, at the time the 10 Day Notice was issued on October 3, 2019. After the Tenant received the 10 Day Notice, she had 5 days to pay rent in full or file an application for dispute resolution with a compelling reason why she did not owe the rent. In this case, I find the Tenant did not pay rent, and although she filed an application to cancel the Notice, there is insufficient evidence to show that she had a legal right to withhold the rent.

If the Tenant felt there were deficiencies in the unit that the Landlord did not address, her option was to pay the rent and file an application for an order compelling the Landlord to address the alleged deficiencies.

I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

Next, I turn to the Landlord's request for a monetary order for unpaid rent. After considering the evidence before me, I find there is sufficient evidence to demonstrate that the tenant owes and has failed to pay rent for the months of September through November 2019, inclusive (\$2,800.00 x 3).

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. I also authorize the Landlord to retain the security deposit to offset what is owed in rent. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$8,400.00
Filing fee	\$100.00
LESS: Security Deposit	\$1,400.00
TOTAL:	\$7,100.00

Conclusion

The Tenant's application to cancel the 10 Day Notice is dismissed.

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$7,100.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: November 18, 2019

Residential Tenancy Branch