



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notices to End Tenancy for Unpaid Rent, pursuant to section 46;
- an Order for regular repairs, pursuant to section 32; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord, the landlord's agent, and tenant S.H. (the "tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present during the hearing, service of the tenant's notice of application for dispute resolution and amendment were confirmed, in accordance with section 89 of the *Act*.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the "application") seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notices to End Tenancy for Unpaid Rent and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notices to End Tenancy for Unpaid Rent. I exercise my discretion to dismiss the tenant's claim for regular repairs, with leave to reapply.

Issues to be Decided

1. Is the tenant entitled to cancellation of the 10 Day Notices to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenant's application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in October of 2017 and is currently ongoing. Monthly rent in the amount of \$2,400.00 is payable on the first day

of each month. A security deposit of \$1,200.00 and a pet damage deposit of \$600.00 were paid by the tenant to the landlord.

Both parties agree that the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, effective November 27, 2019 (the "First 10 Day Notice") on November 16, 2019. The First 10 Day Notice was entered into evidence. The First 10 Day Notice states that the tenant failed to pay rent in the amount of \$1,200.00 that was due on November 1, 2019.

Both parties agree that the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, effective December 15, 2019 (the "Second 10 Day Notice") on December 2, 2019. The Second 10 Day Notice was entered into evidence. The Second 10 Day Notice states that the tenant failed to pay rent in the amount of \$3,600.00 that was due on December 1, 2019.

Both parties agree that the tenant paid \$1,200.00 towards November 2019's rent on November 2, 2019 via e-transfer. Both parties agree that the tenant has not paid any rent since the November 2, 2019 payment.

The tenant testified that she has not paid rent because the landlords have not completed repairs she requested to the subject rental property.

Analysis

I find that the First and Second 10 Day Notices were served on the tenant in accordance with section 88 of the *Act*. Upon review of the First and Second 10 Day Notices, I find that they both conform to the form and contents requirements of section 52 of the *Act*.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$2,400.00 on the first day of each month. Section 26(1) of the *Act* applies, even if the landlord has breached the *Act*. The tenant is not permitted, under the *Act*, to withhold rent from the landlord because the landlord has not completed requested repairs.

Section 46(1) of the *Act* states 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.

Section 46(4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

In this case the tenant did not pay rent in accordance with section 26(1) of the *Act* and did not pay the outstanding rent within five days of receiving the First or Second 10 Day Notice. I therefore dismiss the tenant's application to cancel the First and Second 10 Day Notices, without leave to reapply.

Section 55 of the *Act* states that 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.

I find that since the First and Second 10 Day Notices comply with section 52 of the *Act* and the tenant's application to cancel the First and Second 10 Day Notices was dismissed, the landlord is entitled to a two-day Order of Possession.

As the tenant was not successful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

The tenant's application for regular repairs is dismissed with leave to reapply.

The tenant's application to cancel the 10 Day Notices for Unpaid Rent and recover the filing fee is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: December 23, 2019

Residential Tenancy Branch