



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR MNR MNSD FF
Tenant: CNR RP FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on March 20, 2020. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided testimony. The Landlord was represented by an agent (referred to as the Landlord), and the Tenant was present with her translator (referred to as the Tenant).

The Landlord confirmed receipt of the Tenant’s application package and evidence, all in one package. The Landlord did not take issue with the service of this package. I find the Tenant sufficiently served the Landlord with her application and evidence.

The Landlord stated she sent her application, notice of hearing, and first evidence package by registered mail on January 24, 2020. The Tenant confirmed receipt of this package. The Tenant filed 3 amendments with our office. One dated February 6, one February 28, and one March 16, 2020. The Landlord stated she never served the first amendment on the Tenant. I note the Landlord must serve each amendment to the Tenant in order for it to be allowed. Given the Landlord failed to serve the first amendment, I decline to consider it.

The Landlord stated she mailed her second evidence package, and second amendment to the Tenant by registered mail on March 10, 2020. The Tenant confirmed receipt of this package on March 12, 2020. I find the Landlord sufficiently served this second amendment and evidence package.

With respect to the Landlord's 3rd amendment, I note it was only submitted to our office 4 days prior to the hearing. The Rules of Procedure stated that all documentary evidence and hearing material must be received by the respondent no later than 14 days prior to the hearing. I find the 3rd amendment is filed late, and won't be considered.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Issues

Both parties are seeking multiple remedies under multiple sections of 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 both parties applied for, and based on the evidence before me, I find the most pressing and related issues in this cross-application are related to the payment/non-payment of rent and the order of possession (whether or not the tenancy will continue, or end, based on the Notice issued.) As a result, I exercise my discretion to dismiss, with leave to reapply, all of the grounds in both applications with the exception of the following grounds:

- an order of possession based on a 10-Day Notice (the Notice) for unpaid rent or utilities and whether or not the Tenant is entitled to have this Notice cancelled; and,
- a monetary order for the Landlord for unpaid rent or utilities.;

Issues to be Decided

- Should the Notice 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 in the hearing that monthly rent in the amount of \$2,650.00 was to be paid on the first of each month. Both parties also agreed that the Landlord currently holds a security deposit in the amount of \$1,325.00. The Landlord stated that the Tenant failed to pay any rent for January, February, and March 2020, and now owes \$7,950.00 in rent for these months.

The Tenant acknowledged that she did not pay rent for January, February, and March 2020. The Tenant stated that she did not pay any rent after getting the Notice due to issues with the air conditioner. The Tenant stated that they had some disputes over repairs but she did not present any legal basis as to why she did not have to pay rent, nor she provide evidence that she had to pay for emergency repairs or that she was entitled to withhold rent to offset amounts she paid for emergency repairs. The Tenant stated she applied for the Landlord to complete emergency repairs but the application was dismissed in late January.

The Tenant stated that although she is not actively staying in the rental unit (she is staying with a friend), she still has the keys to the rental unit, collects the mail, and has a couple of belongings in the unit. The Tenant confirmed she stopped most of the utilities in February and has been in dispute with the Landlord since that time about not wanting to return the keys until the Landlord returns the security deposit. The Tenant also feels she is entitled to compensation. However, it was not clear on what basis. The Landlord stated that the Tenant does not have anything left in the unit, but she wants an order of possession anyways to get the keys back and end the tenancy, legally, to prevent the Tenant from returning to the unit at will.

The Tenant stated that she began discussing moving out with the landlord by text message, in early January, but stated she never formally gave any written notice to end tenancy to the Landlord and the Tenant specifically asserted that she still has an active tenancy agreement with the Landlord, despite not staying there lately. The Tenant provided copies of the text messages in Chinese. However, the Landlord questioned the accuracy of these texts, as they were translated by an unknown person. The Landlord stated she never got any formal written notice from the Tenant that she was ending the tenancy, or that she had abandoned the unit. The Landlord also provided copies of text messages, written in Chinese, translated by an unknown source. Both parties provided unofficial translations of foreign language text messages, and the accuracy of the text messages was raised as an issue.

The Tenant acknowledged getting the Notice on January 8, 2020, which indicated that \$2,650.00 was outstanding for rent for the month of January 2020. Since that time the rent has remained unpaid and no payments have been made.

Analysis

First, I note that although the Landlord claims the Tenant has moved out most of her belongings, and no longer stays over at the rental unit, I also note that the Tenant retained the keys, still comes to get the mail (she received the Landlord's evidence packages at the rental unit in March), *claims* to still have some shoes and clothes in the unit, and has not given any formal written notice that she is seeking to end the tenancy. I note the Tenant states she indicated to the Landlord, via text message, that she was going to move out if the issues weren't addressed. However, I note the accuracy of the text messages (from both the Landlord and the Tenant) are in question, and without proof that the translations were done by a professional, then I do not find they are sufficiently reliable, such that I could find they are helpful for this proceeding.

Further, I find that none of the translated text messages act as a proper written notice to end tenancy. It appears the Tenant went to stay with a friend in January sometime while she waited for the air conditioner to be fixed. I note the Tenant withheld rent until the Landlord came to fix the air conditioner.

I note the parties had a hearing in January where the Tenant applied for an order that the Landlord make emergency repairs to the unit. However, that application was dismissed, as the Tenant appeared and stated she was more interested in pursuing monetary compensation (which was not a permissible issue at that hearing).

I find the tenancy, as of the time of this hearing, is still active, despite there being no active utilities, and little evidence of occupation, as there is insufficient evidence the Tenant has abandoned the unit, or that the tenancy has been legally ended by written notice. I have also considered that the Tenant returned to the premises and the rental unit numerous times since the time the utilities were shut off in early February, and still collects her mail with the mail key. As the tenancy has not yet legally ended, I find I must decide upon whether or not the Landlord is entitled to an order of possession, based on the Notice she issued for non-payment of rent in January.

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 find the Notice was received by the Tenant on January 8, 2020. Further, the undisputed testimony of both parties is that rent was not paid when due on January 1, 2020. Further, I find that filing an application for dispute resolution does not give a tenant a right under the *Act* to deduct all or a portion of the rent.

As rent has not been paid when due, and there is insufficient evidence before me that the Tenant had a right under the *Act* to deduct all or a portion of rent (ie- for emergency repairs she may have personally paid for), I find that the Tenant's Application is dismissed. When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. Having reviewed the Notice, I find it complied with section 52 of the *Act*. Accordingly, I find 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 January – March 2020 (\$2,650.00 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. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$7,950.00
Other:	
Filing fee	\$100.00
LESS:	
Security Deposit currently held by Landlord	(\$1,325.00)
TOTAL:	\$6,725.00

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 **\$6,725.00**. 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: March 20, 2020

Residential Tenancy Branch