



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, LRE, PSF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated October 15, 2020; and a monetary order for damage or compensation under the Act for the Tenant of \$1,000.00; to suspend or restrict the Landlord's right to enter; and for an order to provide services or facilities required by the tenancy agreement or law.

The Tenant, the Landlord, and an agent for the Landlord, C.R. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness for the Tenant, T.B., was also present and provided affirmed testimony.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant said that she served the Landlord with her Notice of Hearing, Application, and evidentiary submissions in person, although she could not remember when. The Tenant said that she has suffered a head injury and that she is forgetful at times. The Landlord confirmed receipt of the Tenant's hearing documents, and he said that he had sufficient time to review the evidence.

The Agent said that she sent the Landlord's evidentiary submissions to the Tenant by registered mail on December 20, 2020; however, the Tenant said she did not receive a registered mail package from the Landlord. Later in the hearing the Tenant was commenting on the evidence submitted by the Landlord, and I asked her how she

received this evidence, if not by registered mail. The Tenant said that the Landlord served her by posting it on her door. Based on the evidence before me overall, I find that the Parties were served with the Notice of Hearing, Application, and each other's evidentiary submissions in this matter.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

During the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, I found the Tenant indicated different matters of dispute on the Application, the most urgent of which is the Application to set aside a 10 Day Notice. I found that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's request to set aside the 10 Day Notice at this proceeding. Therefore, the Tenant's other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

Section 55 of the Act states that if a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52, I must grant the landlord an order of possession.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on August 15, 2020, with a monthly rent of \$875.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$437.50, and no pet damage deposit.

The Landlord said he served the Tenant with the 10 Day Notice, because she has not paid any rent since paying a half month's rent and the security deposit in August 2020.

The Tenant said:

It wasn't very good, what we said to each other. I get part of my money from CPP and Social Development, so they cut me off. That's why I haven't been able to pay. He called them, because that's the type of person he is - he's very intimidating, he's very loud.

It was two months until I found out that I wasn't paying. I'm not the type of person to get behind like that. When he didn't respond. I had to put in what we're doing here. By that time, he's already phoned the Ministry.

There is supposed to be an advocate for me; I need a lawyer to help me. It has been horrific for me in that building. I am looking, but I have a small dog and other injuries... it is difficult for me to find a place. My son has recently passed away. I have an ex boyfriend harassing me. He knew this – I told [the Agent] everything that is going on.

I have not paid nothing. He knew about my head injury. Why would it come to where I'm so far behind?

The Ministry told me that I should just move.

The Landlord said:

When it all comes down to the rent, I did politely ask her that it is not my responsibility to take care of her funds. She had to come to me and discuss this, and it never did happen. Every time I would ask her about rent, she would say 'arbitration' and slam the door. Every time I see her, I say arbitration or not, she needs to pay rent.

She slams the door so hard that he can see the door jam move. I can see it from the outside. . . . I just want her to leave the building.

The Tenant said:

He wouldn't reasons with me; he wouldn't answer; I tried to get caught up with the rent. I'm sorry I got behind; it's not my intention. The Landlord is so much bigger and infuriating and his aggressive behaviour is uncalled for. That's why I'm looking for a lawyer.

I would love to try to catch up with it, but I'm out all this money, because of this fridge thing. He has been bullying me since I have been in there.

The Landlord submitted a monetary order worksheet, which set out the amount of rent the Tenant owes the Landlord for this rental unit. The Landlord said she owes \$875.00 for unpaid rent in each of September, October, November, and December 2020, and January 2021, for a total of \$4,375.00. The Tenant did not deny owing this amount of rent to the Landlord.

The Landlord also included amounts for cleaning and "expected door damage", as well as \$25.00 fees for insufficient funds charged by the banks for rent cheques the Tenant gave the Landlord, which were not honoured. However, the Landlord did not apply for dispute resolution to claim funds owing by the Tenant; therefore, I cannot award the Landlord a monetary order in this matter.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 of the Act states that a landlord can end a tenancy for non-payment of rent by giving notice to end the tenancy that is compliant with section 52, as to form and content.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice on October 18, 2020, three days after it was posted on her door, pursuant to the Act.

Section 26 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 the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

The 10 Day Notice was signed, dated, had the rental unit address, and the effective vacancy date which is automatically corrected to October 28, 2020. I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenant did not testimony as to why the rent was not paid, and she did not provide any documentary evidence establishing that she had a right under the Act to deduct all or a portion of the \$4,375.00 in rent owed for September 2020 through to January 2021. Therefore, I find the Tenant's Application to cancel the 10 Day Notice is dismissed without leave to reapply.

As a result, I find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenant has not paid rent for the last five months, the Order of Possession will be effective two days after service of the Order on the Tenant.

Conclusion

The Tenant has not paid rent for the last five months, so her Application is dismissed wholly without leave to reapply. Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this order, as soon as possible.

Should the Tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: January 13, 2021

Residential Tenancy Branch