



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, MNDCT

Introduction

On February 9, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to cancel a 10-Day Notice to End Tenancy. On April 9, 2021, the Tenant amended her Application to cancel a second 10-Day Notice to End Tenancy and to order the Landlord to comply with the Act. On April 27, 2021, the Tenant amended her Application to request a Monetary Order for compensation. On May 3, 2021, the Tenant amended her Application to increase the amount of her compensation claim. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

Preliminary Matter – Issues

The Tenant submitted amendments to her original claim that were submitted late and not related to the end of tenancy. As such, I have determined the Tenant’s claims regarding an order for the Landlord to comply with the Act and for compensation as not related to the main issue and sever these issues as per *Rules of Procedure 2.3 – Related Issues*.

Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent, dated April 8, 2021 (the “10 Day Notice”) be cancelled, in accordance with section 47 of the Act?

If the 10 Day Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with section 55 of the Act?

Background 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 relevant to the issues and findings in this matter are described in this Decision.

Both parties agreed to the following terms of the tenancy:

The month-to-month tenancy began on August 1, 2020. The rent is \$1,600.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$800.00.

The Landlord submitted a copy of the 10 Day Notice and provided undisputed testimony that it was posted on the Tenant's door on April 8, 2021. The move out date on the 10 Day Notice was for April 18, 2021 and the notice documented that the Tenant owed \$4,260.00 in outstanding rent as of April 1, 2021.

The Landlord provided undisputed testimony that the Tenant began failing to pay rent in December 2020 and although the Tenant did make some payments over the next few months, as of May 1, 2021, the Tenant owed the Landlord \$5,860.00 in unpaid rent.

The Landlord confirmed that the Tenant is still living in the rental unit and the Landlord requested an Order of Possession for the unit.

The Tenant confirmed the Landlord's claim and stated that she was told to stop paying the rent once she applied for Dispute Resolution. The Tenant said that she had been dealing with the owner of the house and was told that they would work it out and that she could pay rent when she could.

The Landlord stated that she was the one who signed the Tenancy Agreement with the Tenant and that she always dealt with the collection of rent from the Tenant.

Analysis

Section 26 of the Act explains that the tenant must pay rent when it is due under the Tenancy Agreement, whether or not the landlord complies with this Act, the Regulations or the Tenancy Agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,600.00 by the first

day of each month and that the Tenant has not fully paid rent from December 2020 through to May 2021.

As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

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 tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the Notice.

Based on both parties' testimony and submissions, I find that the 10 Day Notice was received by the Tenant on April 8, 2021, and that the Tenant had an outstanding amount of rent owing to the Landlord, as of April 1, 2021, in the amount of \$4,260.00, and that the amount is still in arrears. As such, I find that the 10 Day Notice is valid and dismiss the Tenant's Application to cancel the 10 Day Notice, without leave to reapply.

Section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution 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 and the landlord has issued a Notice to End Tenancy that is compliant with the Act.

Section 52 of the Act requires that any Notice to End Tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form. I find the 10 Day Notice, issued by the Landlord on April 8, 2021, complies with the requirements set out in Section 52.

I have dismissed the Tenant's Application and found that the 10 Day Notice is compliant with the Act. For these reasons and because the Tenant is still occupying the rental unit, I grant the Landlord an Order of Possession.

Conclusion

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served on the Tenant. Should the Tenant 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: May 11, 2021

Residential Tenancy Branch