



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, FF (Landlords' Application)
CNR, CNC, RR (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on November 1, 2016 and by the Landlords on November 4, 2016 under the *Residential Tenancy Act* (the "Act"). The Landlords applied for an Order of Possession and a Monetary Order for unpaid rent, as well as a request to recover the filing fee. The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") and to cancel a notice to end tenancy for the Landlord's use of the property. The Tenant also applied for a reduction in rent for repair, services or facilities agreed upon but not provided.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided in relation to the issues to be decided in this hearing.

Preliminary Issues and Findings

One of the Landlords, an agent for the Landlords, and the Tenant appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlords' Application but disputed receipt of the Landlords' documentary evidence. The Landlord provided into documentary evidence a copy of the 10 Day Notice, a proof of service document for the 10 Day Notice, and a copy of the signed tenancy agreement. The Tenant did not dispute the content of these documents. Therefore, I allowed them to be used in this hearing as evidence to support the oral evidence.

The Landlord denied receipt of the Tenant's Application. The Tenant testified that she had served a copy of her Application to each Landlord on November 4, 2016 by registered mail and stated that they had not been returned back to her. The Tenant allowed me to check the status of the documents she sent using the Canada Post

tracking numbers she had provided into evidence. The Canada Post website shows that both sets of documents were being returned to the sender because they contained an incomplete address. The Tenant submitted that she had sent them to the correct address as it appeared on the tenancy agreement and on the 10 Day Notice.

When a party makes an Application, the applicant is responsible to satisfy the service requirements of the Act. In this case, it was clear to me that the Landlords had not received the Tenant's Application and that the issue for the failure of the documents to be delivered to the Landlords rested with the Tenant's failure to complete a full address of where the documents were to be delivered to. Based on the Canada Post evidence before me and the oral evidence of the Landlord, I find the Tenant failed to serve her Application pursuant to the Act. Therefore, the Tenant's Application was not determined in this hearing.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession for unpaid rent?
- Are the Landlords entitled to unpaid rent?

Background and Evidence

The parties agreed that this tenancy for the Tenant and a Co-Tenant started on March 1, 2016. A written tenancy agreement was signed and provided into evidence. The parties agreed that rent for this tenancy is payable in the amount of \$1,300.00 on the first day of each month.

The Landlords' agent testified that the Tenant had failed to pay full rent for August and September 2016 leaving an outstanding balance of \$650.00 for each month. The Landlords' agent testified that the Tenant also failed to pay rent on October 1, 2016. As a result the Landlords served the Tenant with the 10 Day Notice dated October 6, 2016. The 10 Day Notice was served by posting it to the Tenant's door on October 7, 2016 with a witness. The 10 Day Notice was provided into evidence and shows a vacancy date of October 15, 2016. The 10 Day Notice also detailed unpaid utilities; however, the parties were informed that as the Landlord had not claimed for utilities, this matter was not to be decided in this hearing.

The Landlords' agent continued to testify that the Tenant had not paid rent for November and December 2016. Therefore, the Landlords' monetary claim amount that she was seeking from the Tenant was for \$5,200.00 in unpaid rent.

The Tenant confirmed receipt of the 10 Day Notice which was posted to her door on October 15, 2016. The Tenant stated that she was not aware of the five day time limit provided for by the Act to dispute the 10 Day Notice.

The Tenant was not able to say how much rental arrears she was in but when she was asked whether she disputed the Landlord's monetary claim amount, she said that the only amount she disputed was the rental arrears for October 2016. The Tenant explained that she had paid \$650.00 for October 2016 which was her portion of the rent as she had entered into this tenancy with a Co-Tenant. The Tenant testified that she had an agreement with the Landlord that she could withhold the remainder rent of \$650.00 for October 2016 because she had a verbal agreement to not pay that amount because the Co-Tenant and people related to the Co-Tenant had done some repairs and removal work for the Landlord in exchange for nonpayment of rent.

The Landlord vehemently denied such an arrangement was made and submitted that the work that the Co-Tenant and her friends performed was voluntary and done of their own accord because they were responsible for removing property which belong to guests of the Co-Tenant. The Tenant was unable to provide any written documentation detailing such an agreement or that it was being made in exchange for rent. The Tenant stated that she could make her daughter available for the hearing to testify to this verbal agreement but the Landlord stated that they would dispute the Tenant's daughter's testimony because it would be biased.

In relation to the remainder of the unpaid rent in this tenancy, the Tenant submitted that the Landlord had harassed her and had put a stop to utilities being provided to them under this tenancy. The Tenant stated that the Co-Tenant had brought roommates into the rental unit without the Tenant's consent and the Landlord failed to remove the roommate when the Tenant requested the Landlord to do this. The Tenant submitted that instead of the Landlord removing the roommate from the rental unit, the Landlord entered into a verbal agreement with the roommate to do repairs and removal work.

The Tenant had applied to dispute a notice to end tenancy for the Landlords' use of the property. During the hearing, the parties confirmed that the Tenant had not been service with a 2 Month Notice to End Tenancy for Landlord's Use of Property.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement **whether or not** a landlord complies with the Act. Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a 10 Day Notice, a tenant must

pay the overdue rent or make an Application to dispute it; if the tenant fails to do either, then they are conclusively presumed to have accepted the 10 Day Notice and must vacate the rental unit on the vacancy date.

Having examined the copy of the 10 Day Notice, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Tenant received the 10 Day Notice on her door on October 15, 2016 pursuant to her oral testimony and the date she documented on her Application as having received it. Therefore, the Tenant would have had until October 20, 2016 to pay the outstanding rent or dispute the 10 Day Notice. The evidence before me is that the Tenant did not apply to dispute the 10 Day Notice until November 1, 2016 that rent still remains outstanding. I also find the Tenant failed to provide sufficient evidence that exceptional circumstances existed which prevented her from making the Application within the time limits set by the Act.

In addition, I accept the Landlord's undisputed evidence that the Tenant failed to pay rent of \$650.00 each for August and September 2016, and for the months of November and December 2016. In relation to October 2016 rent, I find the Tenant failed to provide sufficient evidence that she had made a rent payment of \$650.00 or that the Tenant was allowed to withhold the remaining rent for October 2016. In this respect, the Tenant relied on her disputed oral testimony and the disputed oral testimony of her daughter as a witness. In a case where a tenant has been given permission to withhold rent, it is imperative that a tenant secures such permission in writing, especially when it hinges on a material term such as rent payment in a tenancy. In the absence of such a written agreement or evidence that goes beyond oral testimony, I accept that the Tenant had no authority to withhold rent under the Act and failed to pay any rent for October 2016.

Furthermore, Policy Guideline 13 to the Act provides for the definition of a co-tenant being, two or more tenants who rent the same property under the same tenancy agreement. In this case, the parties confirmed the written tenancy agreement was for two tenants to rent the unit at the start of the tenancy. The policy guideline goes on to say that co-tenants are **jointly and severally liable** for any debts or damages relating to a tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants named on the agreement. The responsibility then falls to the tenants to apportion amongst themselves the amount owing to the landlord. Therefore, any dispute that arises between a Tenant and Co-Tenant is not the responsibility for the Landlord to resolve and is outside of the jurisdiction of the Act.

Based on the foregoing, I find that the Tenant failed to dispute the 10 Day Notice within the time limits provided for by the Act and has not disclosed any legal authority to

withhold rent. I find the Tenant is in rental arrears for this tenancy and the Landlords have proved the 10 Day Notice. Therefore, I grant the Landlords' request for an Order of Possession. As the Tenant continues to occupy the rental unit and is currently in rental arrears, the Landlords are granted an Order of Possession which is effective two days after service on the Tenant. This order must be served on the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to voluntarily vacate the rental unit.

In relation to the Landlords' monetary claim, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$5,200.00 claimed as well as recovery of the filing fee in the amount of \$100.00. As a result, the Landlords are issued with a Monetary Order for a total of \$5,300.00. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make voluntary payment.

Conclusion

The Tenant was not issued with a notice to end tenancy for the Landlord's use of the property. Therefore, this portion of the Tenant's Application is dismissed without leave to re-apply. The Landlords have proved the 10 Day Notice and therefore, the Tenant's Application to cancel the 10 Day Notice is also dismissed without leave to reapply. The Tenant failed to serve the Landlords with her Application. Therefore, the Tenant's Application for a reduction in rent was not dealt with in this hearing; however, the Tenant is a liberty to re-apply for a monetary claim for damage or loss under the Act. The Landlords' request for an Order of Possession, a Monetary Order for unpaid rent, and recover of the filing fee is granted. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 19, 2016

Residential Tenancy Branch