



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR RR FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on March 21, 2018. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided testimony. The Landlord acknowledged receipt of the Tenant's application package and evidence. The Landlord did not submit any documentary evidence for this hearing.

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 Matters

The Tenant applied for multiple remedies under the *Act*, some 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 before me at the start of the hearing, I determined that the most pressing and related issues in both applications deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Tenant's application with the exception of the following ground:

- to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities (the "Notice").

Issues(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Background and Evidence

Both parties agree that current rent is \$2,692.00 and is due on the first of the month. The Landlord issued the Notice because there was \$2,446.00 in unpaid rent, as of January 11, 2018 (the date he sent it by mail to the Tenant). The Tenant acknowledged receiving the Notice on January 16, 2018.

The Landlord stated that the amount on the Notice was based on an unpaid rent amount from December 2017 in the amount of \$1,100.00. Plus, on January 1, 2018, the Landlord stated he did not get any rent from the Tenant for the month of January, and so the amount on January 1, 2018, that the Tenant owed was up to \$3,792.00. The Landlord stated that the Tenant paid \$1,346.00 on January 5, 2018, leaving a balance of \$2,446.00 at the time he drafted the Notice on January 11, 2018. The Landlord stated that he received another \$1,346.00 on January 15, 2018, leaving \$1,100.00 owing. The Landlord stated that the Tenant was not authorized to withhold any rent, and he never agreed that she could do so, for any of the repairs she said she did. The Landlord also stated the Tenant never gave him any receipts for any of the repairs so he would have no way of knowing what she paid.

The Tenant acknowledges that she withheld \$1,100.00 in rent because paid for the following repairs:

- Toilet repair done and paid for by the Tenant in July of 2017- \$244.76
- Refrigerator repair done and paid for by the Tenant in July of 2017- \$423.78
- The Tenant bought a remote control to enable her to adjust exterior blinds - \$348.19
- Total cost: \$1,016.73

The Tenant stated that she withheld \$1,100.00 instead of \$1,016.73 because she wasn't sure how much it was going to cost her for the sink that she was also going to repair in the rental unit. The Tenant stated that she never sent any receipts to the Landlord because he never asked for them.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I make the following findings:

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(1) 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, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution.

The Tenant acknowledged receiving the Notice on January 16, 2018. I note that the Tenant withheld \$1,100.00 in rent for the repairs she made to the rental unit. However, she also stated that she had only spent \$1,016.73 in total on these repairs. Given that the amount the Tenant withheld from rent (\$1,100.00) was more than any repairs she made (\$1,016.73), it is not necessary for me to consider whether or not they qualify as emergency repairs; even if the Tenant did have the right to deduct the cost of the repairs from the rent owed, pursuant to section 33 of the *Act*, she withheld more than the repairs actually cost her, which would leave a balance of unpaid rent regardless of whether or not I found she had the right to deduct the cost of these repairs from rent outstanding.

I note that emergency repairs are defined in the *Act* under section 33, and there is a process for the Tenant to follow to make emergency repairs, prior to deducting any amounts from rent. I find there is insufficient evidence from the Tenant to prove she followed the process. There is no evidence she followed section 33(3) under the *Act*. In any event, I do not find that repairs to the refrigerator or the remote control for window blinds constitute emergency repairs as defined in section 33(1)(c) of the *Act*.

Although the Tenant disputed the Notice on time, the evidence before me indicates that at the end of the 5 day period, on January 21, 2018, the Tenant had not paid rent in full, given that she withheld more than the cost of any repairs she may have paid for. Given this, I dismiss the Tenant's application to cancel the Notice.

As the Tenant's Application is dismissed, I must now consider if the Landlord is entitled to an Order of Possession pursuant to sections 55 of the *Act*. Under section 55 of the *Act*, when 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. 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 of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the 10 Day Notice issued by the Landlord meets the requirements for form and content and the Landlord is entitled to an order of possession. The Order of Possession will be effective 2 days after it is served on the Tenant.

Since the Tenant was not successful with her application, I decline to award her the recovery of the filing fee she paid for this application.

Conclusion

The Tenant's application is dismissed, in full, without leave to reapply.

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.

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 23, 2018

Residential Tenancy Branch