



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, FFL, MT, CNR, ERP, LRE

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On September 17, 2018, the Landlord applied for a monetary order to recover unpaid rent.

On September 19, 2018, the Tenant applied for more time to cancel a Notice to End Tenancy and to cancel a 10d Day Notice to End tenancy for Unpaid Rent or Utilities. The Tenant also applied for emergency repairs and to suspend or set conditions on the Landlords right of entry.

The matter was set for a conference call hearing. Both parties were present at the hearing. The Tenant was assisted by a support person. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before 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.

Issues to be Decided

- Should the Tenant be given more time to dispute the notice to end tenancy?
- Is the Landlord entitled to an order of possession of the rental unit due to non-payment of rent?

- Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The parties testified that the tenancy started on April 1, 2014, and is currently on a month to month basis. Rent in the amount of \$1,350.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$625.00 and a pet damage deposit of \$200.00.

10 Day Notice

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 6, 2018, ("the 10 Day Notice"). The Landlord testified that the 10 Day Notice was posted on the Tenant's door on September 6, 2018.

The 10 Day Notice indicates the Tenant has failed to pay \$1,350.00 that was due on September 1, 2018.

The 10 Day Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement for September 2018, within five days of her receiving the 10 Day Notice.

The Landlord testified that the Tenant has not paid the rent owing for September, October or November 2018. The Landlord is seeking an order of possession for the rental unit and a monetary order in the amount of \$4,050.00.

The Tenant testified that she was in the hospital and a friend brought her the 10 Day Notice on September 7, 2018. The Tenant disputed the 10 Day Notice on September 19, 2018.

The Tenant applied for more time to dispute a notice to end tenancy. She testified that she was in the hospital and she was not able to complete her application to dispute the 10 Day Notice until September 19, 2018.

The Tenant testified that she has not paid the rent owing under the tenancy agreement for September, October, or November 2018. The Tenant testified that she does not have the money to pay the rent.

Analysis

Section 26 of the Act states that a Tenant must pay the 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 this Act to deduct all or a portion of the rent.

Section 66 of the Act addresses extensions to time limits established by the Act. This section provides that the director may extend a time limit established by this Act only in exceptional circumstances. The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Section 47(5) of the Act states:

If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date.

Based on the evidence and testimony before me I make the following findings:

In accordance with the Act, the effective date of the 10 Day Notice automatically corrects to be 10 days after the Tenant received the Notice. I find that the effective date of the 10 Day Notice is September 17, 2018.

I find that the Tenant's request for more time to dispute the 10 Day Notice was made beyond the effective date of the 10 Day Notice. The Tenant's request for more time to make an application to cancel a notice to end tenancy is dismissed.

Even if the Tenant was permitted to have more time; the Tenant's request to cancel the 10 Day Notice would not be successful. I find that the Tenant did not have a legal right to withhold payment of the rent. The tenancy has ended due to a fundamental breach of tenancy agreement regarding payment of rent.

I dismiss the Tenant's application in its entirety.

I find that the Landlord is entitled to an order of possession of the rental unit, pursuant to section 55 of the Act. I grant the Landlord an order of possession effective two (2) days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Tenant owes the Landlord \$4,050.00 for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to pay the Landlord the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I grant the Landlord a monetary order in the amount of \$4,150.00.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement for September, 2018, within 5 days of receiving a 10 Day Notice and did not have a legal right to withhold payment of the rent.

The Tenant's application is dismissed.

The Landlord is granted an order of possession effective 2 days after service on the Tenant.

The Landlord is granted a monetary order in the amount of \$4,150.00.

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: November 02, 2018

Residential Tenancy Branch