



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR OPC MNR MNDC FF / MT CNC CNR LRE

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for cause pursuant to section 55;
- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- more time to make an application to cancel the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 66;
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to change the locks and/or to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. No issues were raised with respect to the service of the respective applications.

The tenant testified that she did not however receive any of the landlord's evidence. The landlord confirmed her evidence package was not served on the tenant, but it consisted mainly of letters the tenant would have received directly from the strata. The tenant denied receiving letters directly from the strata. As the landlord failed to serve its

evidence on the tenant, the landlord's evidence package was not relied upon in making this decision.

Neither party submitted a copy of the One Month Notice or 10 Day Notice. The landlord was provided until 1:00 p.m. on the day of the hearing to upload these documents to the file. The documents were subsequently uploaded by the landlord as requested.

Issues

Should the tenant's request for more time to make an application to cancel the One Month Notice be granted?

Should the landlord's One Month Notice and/or 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award for unpaid rent and compensation for loss and for recovery of the filing fee?

Background and Evidence

The tenancy began on March 11, 2019 with a monthly rent of \$1800.00 payable on the 1st day of each month. The tenant paid a security deposit of \$900.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on July 25, 2019 she served the tenant with the One Month Notice by posting a copy to the door of the rental premises. The landlord submitted a witnessed proof of service form in support of service of the One Month Notice.

The landlord testified the tenant also failed to pay the \$1800.00 rent payable on August 1, 2019. The landlord testified that on August 15, 2019 she served the tenant with a 10 Day Notice by registered mail.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated on the 10 Day Notice within five days of receipt of the Notice and has not paid any rent since.

The landlord's monetary claim is for outstanding rent in the amount of \$5400.00. The landlord testified that this includes unpaid rent for the months of August, September and October 2019. The landlord is also seeking \$1000.00 in strata fines and \$50.00 in NSF charges. The landlord testified the tenant bounced cheques for the months of August and September 2019.

The tenant acknowledged receiving the One Month Notice but testified she was not sure of the date. The tenant testified it could have been end of July 2019 or early August 2019. The tenant testified she was in the hospital during the time so could not recall the exact date.

The tenant's application to cancel the One Month Notice was filed on August 21, 2019. The tenant submits that she was late in filing the dispute as she was hospitalized. The tenant did not provide any supporting documents such as hospital admission records in support of the period during which she was allegedly hospitalized.

The tenant acknowledged service of the 10 Day Notice and that she did not pay the full amount of the arrears indicated, within five days, of receiving the Notice. The tenant acknowledged not paying any rent in the month of August 2019 and testified that she was awaiting a settlement payment for an accident she had been in. The tenant argues that she has since put money in her account and the landlord has post dated cheques which she could have cashed.

The tenant disputes the strata fine and NSF charges as she did not receive any evidence from the landlord for such.

Analysis

Pursuant to section 66 of the Act, the director may extend a time limit established by this Act only in exceptional circumstances. Under subsection 66(3), the director has no authority to extend the time limit to make an application to dispute a notice to end a tenancy beyond the effective date of the notice.

The tenant argued she could not file to dispute the One Month Notice within the 10 Day time limit due to being hospitalized. However, the tenant did not provide any hospitalization records in support.

The tenant's request to extend a time limit to file an application is dismissed.

I accept the landlord's testimony that the One Month Notice was posted to the tenant's door on July 25, 2019 and I find that the tenant to be deemed served three days after this date on July 28, 2019.

Pursuant to section 47(4) of the Act, the tenant may make a dispute application within ten days of receiving the One Month Notice. As the tenant was deemed served the One

Month Notice on July 28, 2019, the tenant's application should have been filed on or before August 7, 2019. The tenant's application was not filed until August 21, 2019.

In accordance with section 47(5) of the *Act*, as the tenant failed to take this action within ten days, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the One Month Notice, September 30, 2019.

The tenant's application to cancel the One Month Notice is dismissed. I find that the One Month Notice complies with the requirements of Section 52 of the *Act*, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the *Act*.

Additionally, the tenant acknowledged not paying the outstanding \$1800.00 rent for August 2019 within 5 days of receipt of the 10 Day Notice. Section 46 of the *Act* requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Although the tenant filed an application for dispute resolution within the time limit permitted under the *Act*, I find the tenants application must be dismissed as the tenant acknowledged rent was not paid in full within 5 days after receiving the notice nor did the tenant have a right under this *Act* to deduct all or a portion of the rent.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the *Act*. Accordingly, pursuant to section 55 of the *Act*, the landlord is also entitled to an Order of Possession based upon the 10 Day Notice.

I find that the tenant was obligated to pay monthly rent in the amount of \$1800.00 but failed to pay rent for August, September and October 2019. I accept the landlord's claim for outstanding rent of \$5400.00.

As the landlord failed to serve evidence on the tenant in support of the claim for strata fines and NSF charges, this portion of the landlord's application is dismissed with leave to reapply.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$5500.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** 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.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$5500.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: October 18, 2019

Residential Tenancy Branch