



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act). The tenant applied for;

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord; and
- an order requiring the landlord to comply with the Act.

The tenant, her advocate, and the owner's agent (landlord) attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-

The tenant originally filed her application seeking relief as noted above. Thereafter, the tenant filed an amended application, further seeking an order requiring the landlord to comply with the Act. I note that both the tenant's application and amended application did not fully clarify in what way the landlord had failed to comply with their obligation under the Act.

I have, however, determined, and the parties were informed, that the portion of the tenant's application dealing with that request for an order for the landlord's compliance is unrelated to the primary issue of disputing or enforcing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's Application and the hearing proceeded on the tenant's request to cancel the Notice. A determination of the remaining portion of the tenant's application will be made at the conclusion of this Decision.

As another preliminary matter, the landlord submitted their evidence two days prior to the hearing. The tenant said she has not received it.

Rule 3.15 of the Rules sets out that a respondent's evidence, the landlord here, must be received by the Residential Tenancy Branch and the applicant not less than 7 days before the hearing. This evidence was not served within the timelines prescribed by rule 3.15 of the Rules. On this basis, the landlord's evidence is excluded. The parties were informed of this decision at the hearing.

I note that within the landlord's evidence was a copy of the Notice served on the tenant.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice?

Background and Evidence

The tenant did not provide a copy of the written tenancy agreement. The landlord said she had a copy of the written tenancy agreement, but did not provide this copy as she said it was the applicant's responsibility.

The tenant said her tenancy began in October 2013 with another owner. The tenant said her beginning monthly rent was \$850.00 and her current monthly rent was \$1,000.00.

The tenant did not provide a copy of the Notice. Although the landlord submitted a copy of the Notice in their evidence, the copy was blurry and illegible.

I then proceeded to hear the parties' testimony about the Notice.

The landlord said that the Notice was dated December 2, 2019 and was served on the tenant that date, by personal service. The amount claimed to be unpaid rent was \$1,000.00, which was due on December 1, 2019. The landlord said the effective date of the Notice was December 31, 2019.

The landlord said that they received a payment of \$500.00 from the tenant on December 5, 2019, and a transfer of \$600.00 on December 10, 2019, for a total of \$1,100.00 that month.

The landlord said the tenant made payments for January and February 2020, but they considered them to be a use and occupancy payment, not rent.

The landlord said she issued the tenant a One Month Notice to End Tenancy for Cause; however, that One Month Notice was not before me or at issue in this application.

Tenant's response-

The tenant did not provide a clear response at the hearing, but in her application, she contended that the landlord should have provided her a Two Month Notice for Landlord's Use of Property, as they were selling the property.

The tenant's application seeking cancellation of the Notice was originally filed on December 20, 2019, and corrected on December 23, 2019.

Analysis

I have reviewed the blurry photo of the Notice sent in by the landlord. Upon review, I find it meets the form and content required by section 52.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days.

The Notice also explains that if the tenant did not pay the overdue rent or file an application to dispute the Notice within five days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice, or in this case, December 31, 2019.

In this case, the tenant did file an application, and in her application, she said that she received the Notice on December 12, 2019; however, also in her application she failed to state how she received the Notice as required on the form.

The landlord testified that she handed the tenant the document on December 2, 2019, and at the hearing, the tenant did not dispute this testimony.

I therefore find, on a balance of probabilities, that the tenant received the Notice on December 2, 2019, and therefore had until December 7, 2019, to pay the overdue rent or file an application to dispute the Notice.

While the tenant ultimately paid the rent for December 2019, the final payment was made on December 10, 2019, three days after the deadline.

Additionally, the tenant filed her application to dispute the Notice December 20, 2019, also after the deadline of December 7, 2019.

Upon hearing from the parties and based upon the above, I find that the tenant owed the landlord rent of \$1,000.00 when the Notice was issued and that she did not pay all of the rent owed to the landlord or make an application to dispute the Notice within five days of receiving the Notice.

I therefore find the landlord submitted sufficient evidence to support the Notice. As such, I find the tenancy has ended for the tenant's failure to pay rent when due and the landlord is entitled to regain possession of the rental unit.

I dismiss the tenant's application seeking cancellation of the Notice.

As such, I find that the landlord is entitled to and I therefore grant them an order of possession for the rental unit effective 2 days after service upon the tenant, pursuant to section 55(1)(b) of the Act. The order of possession is included with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon her, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

As I have dismissed the tenant's application seeking cancellation of the Notice and issued the landlord an order of possession, I likewise dismiss the remaining portion of the tenant's application for an order for the landlord's compliance with the Act, as the tenancy is ending.

Conclusion

The tenant's application is dismissed, without leave to reapply, for the reasons given.

The landlord has been issued an order of possession for the rental unit, effective 2 days after it has been served on the tenant.

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: February 28, 2020

Residential Tenancy Branch