



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, AS, RR

Introduction

This hearing dealt with the tenant's application to cancel a Notice to End Tenancy for Unpaid Rent; for authority to assign or sublet the rental unit; and, for authorization to reduce rent for repairs or services not provided. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is there a basis to cancel the Notice to End Tenancy for Unpaid Rent?
2. If the tenancy continues, has the tenant established the landlord unreasonable withheld permission to assign or sublet the rental unit?
3. If the tenancy continues, has the tenant established that the rent payable should be reduced?

Background and Evidence

The landlord and tenant provided the following undisputed evidence. A co-tenancy commenced September 1, 2010 and the tenants paid a security deposit of \$700.00. The tenants are required to pay rent of \$1,400.00 on the 1st day of every month. On November 3, 2010 the other co-tenant (referred to as MJ in this decision) gave the landlord notice to end the tenancy effective November 3, 2010 and vacated the rental unit. Later on November 3, 2010 the tenant appearing at this hearing (referred to as KM in this decision) gave the landlord notice to end the tenancy effective December 1, 2010. The landlord collected rent, except for \$100.00, from the tenants for the month of November 2010. On November 25, 2010 the landlord was showing the rental unit to a prospective tenant and KM advised the landlord she was not moving out. The tenant gave the landlord an application to rent for a person prepared to move in to the rental unit with the tenant. On November 28, 2010 the landlord attempted to contact the person's references but was largely unsuccessful.

It was also undisputed that the tenants has not paid any rent for the month of December 2010 and on December 2, 2010 the landlord posted a 10 Day notice to End Tenancy for Unpaid Rent on the rental unit door.



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The tenant has disputed the Notice on the basis that the landlord has not allowed the tenant to have another person move in with her. During the hearing the tenant attributed the inability to pay all of the rent owed to the landlord's rejection of the person she had lined up to move into the rental unit for December 2010. The tenant did not offer any explanation as to why she did not pay the landlord a portion of the rent owed for December 2010. The tenant also submitted that she gave notice on November 3, 2010 under duress and described her state as being stressed and upset.

The landlord submitted that she and KM had long conversations about the tenant's ability to pay rent after the co-tenant moved out. The landlord explained that when the tenant stated she was not moving out the landlord had agreed to consider entering into a new co-tenancy if the new co-tenant was acceptable to the landlord. The landlord met the prospective roommate for only a couple of minutes before he left and then the reference check was unsuccessful. Thus, the landlord did not approve of the person as a new co-tenant.

The landlord was agreeable to permitting the tenant to remain in the rental unit until 1:00 p.m. on January 12, 2011 and requested an Order of Possession for that date and time.

Provided and considered as relevant evidence for this hearing was a copy of the tenancy agreement, 10 Day Notice to End Tenancy, notices to end tenancy given by the co-tenants, the tenancy application by the prospective co-tenant, and various email communications between the parties.

Analysis

Section 44 of the Act provides for ways a tenancy may end. The Act does not permit a landlord or tenant to end a fixed term tenancy before the expiration of the fixed term except for cause or by written agreement by both parties. A tenant is not permitted to use the one month notice to end tenancy as permitted under section 45 of the Act for periodic tenancies.

By way of the KM's note of November 3, 2010 and the landlord advertising the unit to prospective tenants, I find both parties acted in such a way as to indicate their intention to end the tenancy as of December 1, 2010; however, the parties did not enter into a written agreement to end tenancy. A binding mutual agreement to end tenancy must be written and signed by both parties. Thus, I find the co-tenancy was still in effect as of December 1, 2010 and the co-tenants were obligated to pay rent pursuant to the terms of the tenancy agreement.



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The tenants did not pay rent on December 1, 2010 and the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent in a manner that complies with the Act. Since this is a co-tenancy and co-tenants are jointly and severally liable for meeting the obligations under the tenancy agreement, regulations and Act the landlord may serve one or both co-tenants with the Notice to End Tenancy.

Upon receipt of the 10 Day Notice the tenant had five days to pay the outstanding rent in full or dispute the Notice. The tenant disputed the Notice; however, I have found the Notice to be valid and it is undisputed that the outstanding rent was not paid. Further, I do not find any other provision of the Act that would permit the tenant to withhold rent.

I do not find that the landlord was obligated to accept the tenant's acquaintance as a co-tenant and enter into a new tenancy agreement with that person. I do not find anything in the tenancy agreement that would have precluded from the tenant from having a roommate; however, this did not happen and the rent fell into arrears. It is important to note that it is upon each party to a tenancy agreement determine their respective rights and obligations under the Act, regulations and tenancy agreement.

In light of the above, I find no basis to cancel the Notice and I dismiss the tenant's request to cancel the Notice. In accordance with the landlord's request for an Order of Possession effective January 12, 2011 I provide such an Order to the landlord to serve upon the tenant. The Order of Possession may be enforced in The Supreme Court of British Columbia if necessary.

Since the tenancy has ended and the tenant is required to return vacant possession of the rental unit to the landlord, I dismiss the remainder of the tenant's application.

The landlord remains at liberty to make an Application for Dispute Resolution against one or both co-tenants to recover any damages or loss related to this tenancy.

Conclusion

The tenant's application is dismissed and the tenancy has ended for failure to pay rent. The landlord has been provided an Order of Possession effective at 1:00 p.m. on January 12, 2011.

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: January 06, 2011.

Residential Tenancy Branch