



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, MNDC

Introduction

This conference call hearing was convened in response to the tenant's application for a cancellation of a Notice to End Tenancy for unpaid rent, and a Monetary Order for compensation or loss under the Act.

Both parties attended the hearing and provided affirmed testimony. They presented oral evidence and confirmed receipt of the material they intended to submit at the hearing.

Issue(s) to be Decided

Is the tenant entitled to a cancellation of the Notice to End Tenancy?

Is the tenant entitled to a Monetary Order, and for what amount?

Background and Evidence

The rental unit consists of a unit subsidized and operated by the BC Housing Management Commission (the Commission) in Prince George. Pursuant to a written agreement, the month to month tenancy started on June 1st, 2008. The monthly rent of \$1500.00 was based on a "Rent Geared Income", wherein the tenant's portion of the rent was set by the Commission at \$358.00.

In her evidence, the landlord's property manager, S.K., provided a letter from the Commission showing that the rent amount without subsidy was calculated at \$1500.00.

S.K. testified that the tenant became subject of an audit by the Commission in order to adjust the tenant's earning with his rental contribution. S.K. stated that the tenant did not comply with the audit, and as a result the Commission rescinded his subsidy. S.K. provided a letter dated December 20th, 2010 from the Commission's Audit department, informing the tenant that he was not complying with requested income verification documents, and that consequently his subsidy was suspended and that the rent would increase to \$1500.00 as of January 1st, 2011. S.K. stated that the tenant only paid the subsidized amount for that month's rent. S.K. provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent served on January 10th, 2011, and effective January 24th, 2011.

The tenant testified that he complied with the audit. He stated that he received correspondence from the Commission early February 2011 requesting more information, and that the requested information is a violation of the Law Equity Act. The tenant said that he paid the rent in compliance with the income formula. The tenant clarified that his \$1142.00 monetary claim against the landlord in this matter consists of the difference between the unsubsidized rent of \$1500.00 and the amount of his monthly contributions.

Analysis

Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. Therefore the tenant's evidence against the landlord in this dispute does not justify the tenant in not paying the rent. The landlord provided evidence of requests of information for audit purposes and of notices of rental increase. I am satisfied that these documents were properly served on the tenant. The subsidy was temporarily suspended and the tenant only paid the subsidized portion of the rent. The tenant then filed a monetary claim to recover the balance of the unsubsidized amount which he did not pay in the first place.

I find that the 10 Day Notice to End Tenancy was valid and the tenant's application is dismissed in its entirety.

Conclusion

At the hearing, the landlord did not make an oral request for an Order of Possession. The Notice to End tenancy is valid and the tenancy ended on the date specified on the notice.

If necessary, the landlord may file for dispute resolution to exercise his rights pursuant to the Act.

The tenant's application is dismissed.

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 08, 2011.

Residential Tenancy Branch