



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, OLC

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for unpaid rent and for the Landlord to comply with the Act.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on March 7, 2011. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

During the Hearing the Dispute Resolution Officer informed the Tenant and the Landlord that the application is to contest a Notice to End Tenancy for Unpaid Rent and the application for the Landlord to comply with the Act for repairs and cleaning of the rental unit is a separate and unrelated dispute to this application. In section 2.3 of the Residential Tenancy Branch Rules of Procedure (Dismissing unrelated disputes in a single application) a Dispute Resolution Officer may dismiss unrelated disputes within an application. The Tenants’ application for the Landlord to comply with the Act for repairs and cleaning of the rental unit is dismissed with leave to reapply.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

The Landlord said this tenancy started on November 1, 2010 as a fixed term tenancy with an expiry date of October 31, 2011. The Landlord submitted a written tenancy agreement confirming this information. The Tenant said she had a copy of the tenancy agreement and she had signed it. However, the Tenant said she had a verbal agreement with the Landlord that the tenancy started December 1, 2010 and the rent was \$500.00 per month of rent and it was a month to month tenancy agreement. The Landlord denied having this agreement with the Tenant. The rent was due in advance of the 1st day of each month. The Tenant said she paid a security deposit of \$250.00 on

November 8, 2010. The Landlord said the security deposit in the tenancy agreement was for \$300.00 but the Tenant only paid \$250.00.

The Landlord said he had his agent T.E. served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated February 22, 2011. The Agent said she served the Tenant in person and she had a witness to the service of the 10 Day Notice to End Tenancy. As well the Landlord's Agent said that she served both pages of the Notice. The Landlord's agent submitted a signed written note stating she served the Tenant the Notice to End Tenancy on February 22, 2010 and a witness A.L. joined the conference call to confirm the Landlord's agent served the Tenant the Notice to End Tenancy on February 22, 2011 at approximately 7:00 p.m. The Tenant said the Landlord's agent was wrong and the witness was lying. The Tenant said she is living in the rental unit at the present time.

There was much testimony about the repair of the rental unit, but as this application focused on the Notice to End Tenancy the Tenant and the Landlord were told they could make applications regarding repair work and monetary claims in other applications. The Tenant said she understood and she may make an application for emergency repairs and other repairs. The Tenant had witnesses that testified that the rental unit was in very poor condition. She said that she had not made any application to date regarding emergency repairs or other repairs.

The Tenant continued to say that she has withheld rent from the Landlord in the amount of \$100.00 per month as she believed they had a verbal agreement that said she only had to pay \$500.00 per month if the repairs to the unit were not completed.

The Landlord said he did not agree to rent of \$500.00 per month until the repairs were completed and he said there is unpaid rent of \$600.00 for November, 2010 and \$100.00 for each month of December, January, February and March. The Landlord said the Tenant has \$1,000.00 in unpaid rent total and \$50.00 in unpaid security deposit.

The Landlord requested an Order of Possession if the Tenant's application is unsuccessful.

Analysis

The Landlord has presented evidence both written and by sworn statements of witnesses that the Tenant was served in person on February 22, 2011 with a 10 Day Notice to End Tenancy for unpaid Rent. The Tenant has given verbal testimony that she was not served the Notice to End Tenancy. I find, the Landlord's evidence and the testimony of the witnesses have established grounds to establish that the Tenant was served the Notice to End Tenancy. Consequently, I find the Tenant was served with a valid Notice to End Tenancy on February 22, 2011.

Section 26(1) says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

From the evidence submitted and testimony heard from both the Landlord and the Tenant it is apparent that the Tenant has withheld \$100.00 per month from the rent for 4 months. The tenant believes it was part of a verbal agreement with the Landlord and the Landlord says there was no agreement for a rent reduction until repairs were done. I find in favour of the Landlord that he has established proof that there is unpaid rent that the Tenant has withheld. The Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due therefore; I find the Tenant has not established grounds to be granted an order to cancel the Notice to End Tenancy. The Landlord's 10 Day Notice to End Tenancy dated February 22, 2011 stands in effect.

As the Tenant has not been successful in cancelling the Notice to End Tenancy and the Landlord has requested an Order of Possession; pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord with an effective vacancy date 2 days after service of the Notice on the Tenant.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective two days after service of the Notice on the Tenants has been issued to the Landlord. A copy of the Order must be served on the Tenants in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

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*.

Residential Tenancy Branch