



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC; CNR; RPP; FF; O

Introduction

This Hearing was scheduled to hear the Tenants' application to cancel a *One Month Notice to End Tenancy for Cause* issued December 1, 2011; to cancel a *10 Day Notice to End Tenancy for Unpaid Rent* issued December 8, 2011; for an Order that the Landlord return the Tenant's personal property; and to recover the cost of the filing fee from the Landlord.

Both parties gave affirmed testimony at the Hearing.

Preliminary Matter

At the outset of the Hearing, the Landlord stated that the Tenants paid the outstanding rent on December 14, 2011, and therefore the *10 Day Notice to End Tenancy for Unpaid Rent* was no longer an issue. Therefore, the Tenant's application to cancel the *10 Day Notice to End Tenancy for Unpaid Rent* is granted.

The Tenants did not provide any documentary evidence (for example copies of the two Notices to End Tenancy that they seek to cancel or a copy of the tenancy agreement). The Landlord provided a copy of the *One Month Notice to End Tenancy for Cause* issued December 1, 2011 (the "Notice"). The Tenants confirmed that it was the Notice they wished to cancel. The Tenants' Application for Dispute Resolution indicated a different address for the rental unit than the address on the Notice. I amended the Tenants' Application to reflect the correct Dispute Address.

Issue(s) to be Decided

Should the Notice be cancelled?

Should the Landlord be ordered to return the Tenant's personal property?

Background and Evidence

The parties agreed that there is a written tenancy agreement between the parties although no copy was provided in evidence. The parties also agreed that the tenancy started in March of 2004. Monthly rent is \$675.00. The Tenants testified that rent is due on the 7th day of each month. The Landlord's agent testified that rent is due on the

4th day of each month. The parties agreed that the Tenants paid a security deposit in the amount of \$350.00 at the beginning of the tenancy, but that it has since been applied towards unpaid rent and therefore no security deposit remains.

The Landlord issued the Notice on December 1, 2011, and served it the same day by personal service.

The Landlord testified that the Tenants did not pay rent for June and July until July 20, 2011. He stated that the Tenants did not pay rent for September and October until November 22, 2011, and that they paid rent for November and December on December 14, 2011.

The Tenants testified that they were late paying rent because the Landlord was late picking it up and that the Landlord always picked up the rent in the past. The Landlord denied that he was in the habit of picking up the rent. He stated that another tenant who lived in the same building as the Tenants used to bring the Tenants' rent to him, along with her rent, but that she had moved out.

The Tenants testified that the Landlord did not post an address at the rental unit where the Landlord was situated. The Landlord stated that it was on the tenancy agreement and that the Tenants had delivered their rent to him in the past. The Tenants did not dispute this.

The Tenants testified that they had already moved out of the rental unit. The Landlord disputed that they had and asked for an Order of Possession.

Analysis

The Notice indicates that the Landlord seeks to end the tenancy because the Tenants are repeatedly late paying rent. The Act requires tenants to pay rent when it is due. In other words, it is not the responsibility of the Landlord to collect rent when it is due, it is the responsibility of the Tenants to pay it.

I find that the Notice is a valid Notice to End Tenancy. The Tenants application to cancel the Notice is dismissed. I find that the Tenants have been late paying rent for June, July, September, October, November and December, 2011. Rent was due either on the 4th of each month or the 7th of each month. In the absence of a copy of the tenancy agreement and for the purposes of calculating the end of tenancy date, I find that the rent was due on the 7th of each month.

The Tenants testified that they have no possessions in the rental unit and therefore their application for an Order that the Landlord return their possessions is dismissed. During the Hearing, the Landlord requested an Order of Possession. Pursuant to the provisions of Section 55 (1) of the Act, I hereby provide the Landlord with an Order of

Possession. The Notice was served on December 1, 2011, rent was due on the 7th day of each month, and therefore I find that the effective end of tenancy date is January 6, 2012. I hereby provide the Landlord an Order of Possession effective 2 days after serving the Order upon the Tenants.

The Tenants' application was without merit and I find that they are not entitled to recover the cost of the filing fee from the Landlord.

Conclusion

The Tenants' application is dismissed without leave to re-apply.

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenants**. This Order may be filed in the Supreme Court of British Columbia 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: January 05, 2012.

Residential Tenancy Branch