



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNR OLC LRE LAT

Preliminary Issues

Upon review of the Tenants' application, I have determined that I will not deal with all the dispute issues the Tenants have placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the Tenants' request for more time to make their application and to set aside the Landlord's Notice to End Tenancy for unpaid rent; I dismiss the balance of the Tenants' claim with leave to re-apply.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to be allowed more time to make this application and to cancel a 10 Day Notice to End Tenancy for unpaid rent (the Notice).

The parties appeared at the teleconference hearing and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally and referenced the documentary evidence that was submitted. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Was the Tenant prevented from making her application within the required time frames due to unforeseen exceptional circumstances?
2. Has the Landlord issued and served a valid 10 Day Notice to End Tenancy in accordance with section 46 of the *Residential Tenancy Act*?
3. If so, have the Tenants made payments and reinstated this tenancy?
4. Is the Applicant Tenants' tenancy agreement for the entire house or is it for only the main floor of the rental house?

Background and Evidence

The parties agreed they entered into a written tenancy agreement which is for the entire house and lists the two female applicants (EJ and her daughter AJ) to this dispute as co-tenants of the tenancy agreement. EJ's brother moved into the rental unit basement with the approval of the Landlord and began contributing to the rent. The written fixed term tenancy agreement started September 1, 2011, and is set to switch to a month to month tenancy after September 1, 2012. By the End of September 2012 the Tenants had paid \$1,000.00 as the security deposit plus \$1,000.00 as the pet deposit.

EJ affirmed that her son, JJ, has recently moved into the unit and is awaiting documents to be signed so Income Assistance can be paid to the Landlord for his portion of the rent.

AJ affirmed that the Landlord served her the 10 Day Notice around 7:00 p.m. on January 21, 2012. EJ stated that they attempted to make application to dispute this notice however when they went to the downtown outreach office it was closed and she was instructed by her welfare worker to wait to make her application until she looked into her file further. Once she received the call back from her worker she went to the office made her application to dispute the Notice January 27, 2012.

The Landlord's Agent affirmed that the 10 Day Notice was served by the Landlord and he did not know for certain when it was served. He advised the Tenants had dropped off some cheques three days ago. He was not able to confirm if the cheques were government issued or if they were personal cheques and he thinks there was three cheques which totalled "around \$2,450.00". He states he has not put these payments into the bank yet and was not certain the exact amount outstanding for February 2012 rent or the balance due on the utilities.

EJ advised the payments were money orders not personal cheques and she confirmed the amounts totalled \$2,450.00. She stated that her Income Assistant worker is awaiting this decision and copies of the utility bills from the Landlords so they can issue payments directly to the person who is the account holder of the utilities. She is of the opinion that once these utilities are paid that she will be caught up on her payments.

The Landlord's agent was not able to provide an accurate account of when payments have been made or the exact amounts of outstanding payments. He stated that he would agree to continue this tenancy if the Tenants were able to provide payments to clear up the arrears within ten days.

Analysis

Section 46(4) of the Act stipulates that a tenant may dispute a 10 Day Notice to End Tenancy served pursuant to section 46 of the Act by making an application for dispute resolution within five days after the date the Notice is received.

I accept that the Notice to End Tenancy was personally served to the Tenant AJ in the evening off January 21, 2012. The Tenants filed their Application for Dispute Resolution until January 27, 2012, six calendar days after the Notice was received.

Section 66(1) of the *Act* authorizes me to extend the time limit for setting aside a Notice to End Tenancy only in exceptional circumstances. The word "exceptional" means that I am unable to extend this time limit for ordinary reasons. The word "exceptional" implies that the reason for failing to meet the legislated time lines is very strong and compelling.

After considering that the Notice was delivered at 7:00 p.m. in the evening and that the Outreach office is not open daily and does not stay open past regular business hours, I accept the Tenants' submission that they made their application within a reasonable time given the circumstances explained to me during the hearing. Accordingly I extend the time limit for making this application pursuant to section 66(1) of the *Act*.

The evidence supports that the Landlord accepted payments from the Tenants towards rent, after the 10 Day Notice to End Tenancy was issued. The Landlord did not issue the Tenants receipts for these payments for "use and occupancy only". I find that based on the Tenants' testimony they were of the opinion that by giving the Landlord the three money orders February 18, 2012 their tenancy would continue.

Based on the aforementioned I find that the Landlord initiated an implied waiver of the 10 Day Notice to End Tenancy whereby his actions of accepting payment from the Tenants as rent, and not for use and occupancy only, has reinstated this tenancy. Therefore the 10 Day Notice to End Tenancy that was personally served January 21, 2012, is hereby cancelled and of no force or effect.

As per the Tenants' testimony, payment of utilities and any outstanding rent is dependent on EJ receiving copies of all utilities bills, a written accounting of rent charges and payments, and a signed intent to rent form for EJ's son JJ, from the Landlord. Once these documents are received EJ stated she will provide them to her worker at Income Assistance to have payments issued.

As per the aforementioned, I hereby Order the Landlord to provide the Tenant, EJ, with copies of all outstanding utility bills, an accurate accounting of rent charges and payments to date, and a signed intent to rent form for JJ, no later than Monday February 27, 2012.

I hereby Order EJ to deliver the above mentioned documents, and a copy of this decision, to her Income Assistance worker no later than Wednesday February 29, 2012. Failure to do so could result in the Landlord issuing another notice to end tenancy.

Conclusion

The 10 Day Notice to End Tenancy that was served to the Tenants January 21, 2012, is HEREBY CANCELLED and is of no force or effect; and the tenancy continues.

The Tenants request for Orders to have the Landlord comply with the Act, regulation or tenancy agreement, to suspend or set conditions on the Landlord's right to enter the rental unit, and to authorize the Tenants to change the locks to the rental unit, are all dismissed, with leave to reapply.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

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 21, 2012.

Residential Tenancy Branch