



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNR, CNC, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the tenant to dispute a notice to end tenancy for cause dated December 1, 2008 and a notice to end tenancy for unpaid rent dated December 13, 2008. Both parties participated in the conference call hearing and had opportunity to be heard.

The tenant provided a significant amount of evidence to the Residential Tenancy Branch and testified that she served the landlord with the same evidence by fax to a number he had provided. The landlord denied having received the tenant's evidence. The tenant did not submit proof of service by way of a fax transmission confirmation. At the hearing the tenant read the fax number she had used and the landlord testified that the only personal fax he has is also his home telephone number and that the line has to be switched over to receive faxes. The landlord could not recall having given the tenant a fax number for service and the tenant did not provide a copy of the document on which the landlord had written his fax number. I have determined that the landlord was not served with the tenant's documentary evidence and accordingly have not considered that evidence in making this decision.

The landlord provided evidence to the Residential Tenancy Branch and testified that he served the tenant with the evidence by way of registered mail. The tenant testified that she was in the hospital at the time the notification card first arrived from Canada Post. When she was released from hospital, the tenant went to the post office to retrieve the registered mail but was unable to obtain it because she does not have ID. The tenant subsequently faxed a message to the landlord to advise that documents should be couriered to the rental unit after 6 p.m.. The landlord did not receive the fax. The Residential Tenancy Act provides that documents may be served by registered mail. The fact that the tenant does not want documents to be personally served and cannot

retrieve registered mail does not obligate the landlord to serve documents by another means nor does it entitle the tenant to dictate the means by which she may be served. Further, although the tenant had the landlord's telephone number and they have maintained a reasonably good relationship, the tenant did not use that telephone number to advise the landlord that she was unable to retrieve the documents. For the reasons outlined above I have determined that the landlord properly served the tenant with his evidence and I have considered his evidence in making this decision.

Issue(s) to be Decided

Has the tenant paid her rent in full during the tenancy?

Does the landlord have cause to end the tenancy?

Background and Evidence

The parties agreed that the tenancy began in May 2008 and that the tenant is obligated to pay rent in the amount of \$850.00 in advance on the first day of each month. At the outset of the tenancy the landlord collected a \$425.00 security deposit from the tenant.

The parties further agreed that on December 1, 2008 the tenant was served with a one month notice to end tenancy for cause and that on or about December 13, 2008 the tenant was served with a 10-day notice to end tenancy for unpaid rent. The notice to end tenancy for cause makes a number of reasons which I have not addressed in this decision for reasons outlined below.

The landlord alleged that the tenant failed to pay her full rent in the months of July, August, September, November and December. Specifically, the landlord alleges that the tenant owes \$100.00 for July, \$20.00 for August, \$50.00 for September, \$200.00 for November and \$50.00 for December for a total of \$520.00. The landlord submitted copies of receipts for each of those months, each of which is dated after the first of the month. The landlord testified that when he collected the rent he did not always have his receipt book with him, but would deliver receipts either to the mailbox or by taping them to the tenant's door. The landlord also submitted a copy of a letter dated August 1 in which he advised the tenant that her rent was consistently late. In that letter the landlord acknowledged that the tenant was experiencing a "hardship" and expressed a

willingness to work together with her to assist her through that period.

The tenant testified that her rent has always been paid in full. The tenant acknowledged that rent was paid late in August, but said that when she did pay, she paid the entire amount. The tenant denied having received rent receipts for most months, but testified that she had received notes on two occasions acknowledging payment of rent. The tenant acknowledged that the landlord has always been very helpful and understanding but accused him of lying about arrears in order to evict her.

Analysis

When a landlord alleges that rent is owing, the tenant bears the burden of proving that rent has been paid. I find that the tenant has failed to meet that burden. I find that the landlord's receipts accurately reflect the amounts paid by the tenant and further find that the receipts have been given to the tenant. While the tenant testified that her roommate had paid the rent on her behalf in at least one of the months in question, that individual was not present at the hearing to provide sworn testimony. The acknowledgment of the tenant that the landlord has acted respectfully towards her during the tenancy and assisted her during a time of hardship together with the landlord's demeanour during the hearing in which he expressed no animosity towards the tenant despite her accusations has convinced me that the landlord has no motive to manufacture evidence to evict the tenant. I am satisfied that the landlord was prepared to be patient in collecting the arrears until the complaints which gave rise to the notice to end tenancy for cause led to the landlord having to make the decision to end the tenancy in order to preserve the quiet enjoyment to which other occupants, the tenant's neighbours, were entitled. The tenant's application to set aside the notices to end tenancy is dismissed. I find the landlord is entitled to an order of possession. I find it appropriate to end the tenancy on January 31, 2009. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed with the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary order, I accept the landlord's testimony with respect to the arrears and I award the landlord \$1,420.00, which represents \$520.00 in arrears for the aforementioned months, \$850.00 for the month of January, which at the hearing the

tenant acknowledged as having not yet paid and the \$50.00 filing fee paid to bring the landlord's application. I order that the landlord retain the deposit and interest of \$505.43 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$914.57. This order may be filed in the Small Claims Court and enforced as an order of that Court.

As I have upheld the 10-day notice to end tenancy for unpaid rent, I have not addressed the issues raised with respect to the one month notice to end tenancy for cause.

Conclusion

The tenant's claim is dismissed. The landlord is granted an order of possession effective January 31, 2009 and a monetary order for \$914.57.

Dated January 13, 2009.