



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

O

CNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant disputing the amount shown on the Ten-Day Notice to End Tenancy for Unpaid Rent dated June 1, 2009 and effective January 16, 2009. During the hearing the tenant requested an order that the notice be cancelled.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the Ten-Day Notice to End Tenancy for Unpaid was warranted. The questions to be answered include:
 - Did the tenant violate the Act by failing to pay rent when rent was due?
 - Did the tenant have a valid reason under the Act not to pay the rental amount in full?
 - Did the tenant pay the rent in full within 5 days of receiving the Notice to End Tenancy?

The burden of proof is on the landlord/respondent to justify the reason for the Ten-Day Notice.

Preliminary Issue

At the outset of the hearing, the tenant clarified that she wanted the landlord's Ten-Day Notice cancelled as a payment plan had been agreed-upon by the parties. The tenant testified that she had originally made the application to dispute the amount being requested, but once the correct amount of the arrears was established, the tenant had then paid all but \$370.00 of the outstanding debt. The tenant stated that the parties had subsequently reached a mutual agreement that the Notice would be withdrawn by the landlord, provided that the tenant paid all of the arrears by Friday June 19, 2009. However, the landlord testified that no mutual agreement of this nature had ever been finalized and that the landlord still wanted the tenancy ended, being that some of the rent was still owed at the present time.

Background and Evidence

The landlord testified that the Ten-Day Notice was issued on June 1, 2009 at which time the tenant was still in arrears for part of the rent for the month of May 2009. As of the first of June, the tenant also owed an additional \$900.00 in rent on top of the previous amount. The landlord stated that the original tenancy began with another individual but that the applicant tenant later took over in November 2008. The landlord stated that he did not consider the applicant to be his tenant, because no security deposit was paid and nothing was ever signed or arranged. However, the landlord did acknowledge that rent has been accepted from the applicant tenant since November 2008. The landlord stated that the Notice to End Tenancy was issued because the tenant fell into arrears in the rent payments. The landlord stated that although the tenant made partial payments, the tenant did not pay the arrears in full within the 5 days that would cancel the Notice under the Act and therefore the landlord is requesting an Order of Possession based on the Notice.

The tenant conceded that the Ten-Day Notice was received and did not dispute that a portion of the rent was unpaid at that point in time. The tenant testified that, once she realized the correct amount of the arrears, immediate arrangements were made to catch up and the landlord will be receiving all of the money owed by Friday. The tenant stated that this arrangement was verbally agreed-upon by the landlord.

Analysis

In regards to the landlord's assertion that the applicant is not considered to be a tenant of the unit, I find that the Act contains the following definitions:

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

It is clear that, regardless of whether or not there was a written agreement, the fact that the tenant paid rent which was accepted by the landlord thereby giving the tenant the right to possession of the unit, functions to create a landlord-tenant relationship. This relationship is covered by the Act and all the standard terms of a tenancy agreement contained in the Act will apply.

Section 26 of the Act states that rent must be paid when it is due, 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.

Given the testimony of the parties, I find that the tenant did not pay the rent when rent was due, in violation of the Act. I find that the tenant did not pay the arrears in full within 5 days of receiving the Notice to end Tenancy for Unpaid Rent, which would have automatically cancelled the Notice. I also find that the tenant did not have a valid

reason under the Act not to pay the rent. Accordingly, I must dismiss the tenant's request for an order to cancel the Ten-Day Notice. The Notice meets all of the necessary criteria under the Act.

In regards to the issue of finding some middle ground in this matter, I find that I do not have the authority under the Act to impose any compromise agreement on the disputing parties. However, from the testimony offered, it appears that there may be a possibility of the parties reaching a mutual agreement in the near future, provided the rent payments are immediately brought up to date. However, this is a matter that is completely up to the landlord and tenant to determine and arrange between themselves.

My authority is bound exclusively by the Act and I am not at liberty to make any decision outside of that authority.

During the hearing the landlord made a request for an order of possession. Under the provisions of section 55(1) of the Act, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy.

Conclusion

Based on the testimony and evidence discussed above, I hereby issue an Order of Possession in favour of the landlord effective June 30, 2009. The landlord may act to enforce the order at his discretion. To do so, the tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The tenant's application is dismissed without leave to reapply.

June 2009

Date of Decision

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Dispute Resolution Officer