



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNC, OLC, ERP, RP, PSF, LRE, RR, SS, OPR, OPC, OPB, MNR, FF

Introduction

This hearing dealt with cross applications. The tenant had applied for more time to make this application; to cancel a Notice to End Tenancy for Cause; Orders for the landlord to comply with the Act, make repairs and emergency repairs, provide services or facilities required by law; to set conditions on the landlord's right to enter the rental unit; allow the tenant to reduce rent; and to serve documents upon the landlord in a different way than required by the Act. The landlord applied for an Order of Possession for unpaid rent, cause and breach of the tenancy agreement; a Monetary Order for unpaid rent and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the other party's submissions.

The tenant submitted that she was not aware of the landlord's application against her. The landlord testified that he served the hearing documents upon the tenant by registered mail and provided a copy of the registered mail receipt, a tracking number and copies of the Canada Post tracking service that shows a notification card was left for the tenant on July 30, 2009 and the registered mail was waiting at the post office for the tenant to pick up. The landlord testified that he posted the evidence package on the tenant's door on August 13, 2009 in the presence of a witness. The witness testified he observed the landlord post the envelope on the tenant's door and that people staying in the tenant's rental unit removed it from the door on August 13, 2009. The tenant claims she was out of town and that she did not receive the evidence package. Registered mail is sufficient service for an Order of Possession and a Monetary Order. Posting on a door of the tenant's residence is sufficient service with respect to a landlord seeking an Order of Possession. I find the landlord has served the tenant with notification of this hearing and the landlord's evidence in a manner that complies with section 89 of the Act and I accepted the landlord's evidence.

The tenant submitted four pages of evidence in filing her application and submitted additional evidence that was not served upon the landlord. As the landlord was not served with the tenant's late evidence, I did not consider it in my decision. Rather, I accepted the tenant's verbal testimony and the testimony of her witness as evidence.

I heard that one of the co-tenants named in the landlord's application no longer resides at the rental unit and I amended the landlord's application to remove that tenant as that tenant was not sufficiently served with notification of this hearing.

The parties were provided the opportunity to present evidence with respect to ending the tenancy, emergency repairs, the landlord's right to enter the rental unit, service of documents, and unpaid rent. Findings and Orders have been made with respect to all the identified reasons for dispute, except the tenant's monetary claims, and are provided with this decision. After approximately 90 minutes of testimony, the hearing was adjourned to hear the tenant's monetary claims at a later date. Enclosed with this decision for each party are Notices of Reconvened Hearing with respect to the tenant's monetary claims only.

Issues(s) to be Decided

1. Is more time to make the tenant's application?
2. Is there a basis to end the tenancy for unpaid rent, cause or breach of the tenancy agreement?
3. Are emergency repairs necessary?
4. Are conditions required for the landlord's right to enter the rental unit?
5. Is there a basis to serve the landlord in a different way?
6. Is the landlord entitled to unpaid rent?
7. Award of the filing fee.

Background and Evidence

I heard undisputed testimony that the tenancy commenced in September 2007 and the tenant is required to pay rent of \$660.00 on the 1st day of every month. Where the tenant is late paying rent, the tenancy agreement provides that the tenant shall pay a late fee of \$25.00. The agent took over the duties of the landlord in February 2009. The rental unit is a two bedroom unit located in a three unit building.

The landlord testified that since March 2009 he has served the tenant with six *10 Day Notices to End Tenancy for Unpaid Rent* (the 10 Day Notice(s)) with the most recent being served upon the tenant on July 7, 2009. On June 28, 2009 a *1 Month Notice to End Tenancy for Cause* (the 1 Month Notice) was posted on the rental unit door. The tenant acknowledged receiving four 10 Day Notices and did not dispute any of the 10 Day Notices but the tenant did dispute the 1 Month Notice within the allowable time limit.

The 1 Month Notice has an effective date of July 31, 2009 and indicates the reasons for ending the tenancy are:

- Tenant is repeatedly late paying rent;
- Tenant has allowed an unreasonable number of occupants in the unit;
- Tenant, or a person permitted on the property by the tenant, has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord,
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The tenant acknowledged regularly paying rent late but submitted that she was permitted to do so by the previous landlord and that the tenancy agreement provides for late payment by charging a \$25.00 late fee. The agent testified he told the tenant verbally that the rent was due on the 1st day of the month which the tenant denied. As evidence of late payment of rent and unpaid rent, the landlord provided copies of the 10 Day Notices and two receipts issued on June 25, 2009 showing payment of \$465.00 for June rent and \$590.00 for part of July's rent and the notation "use & occupancy" on both receipts. The agent claimed that the tenant has not yet paid the \$70.00 outstanding for July and with the late fee, the agent submits the tenant owes \$95.00. The tenant submitted that the agent authorized her to deduct \$70.00 from the rent for hydro costs but the agent denied he agreed to allow the tenant to withhold \$70.00 of the rent.

The tenant stated that for August 2009 she had made arrangements for her income to be payable to the owner on or before the 1st of the month. The agent confirmed that rent for August 2009 had been paid via cheque and had been deposited in the owner's account on time and that no receipt or other communication was provided to the tenant with respect to accepting the rent for August 2009.

The agent testified that the rental unit has been occupied by the tenant and the tenant's two daughters plus other male individuals and that the tenancy agreement provides for only two occupants. The tenant testified only one of her daughter's resides with her and the other daughter visits frequently but that the previous landlord had told her she could have her daughters live with her. The tenant claimed other people seen at the rental unit are only guests and visitors and are not occupants.

With respect to the other reasons indicated on the 1 Month Notice, the landlord testified that he had received four written complaints from another tenant in the building concerning the loud music, parties, harassment, parking of the motorhome in the driveway and that the RCMP has been called to the rental unit on several occasions, including three times in June and twice in July.

The landlord's witness was called to testify in support of the landlord's submissions. The landlord submitted that former tenants of the main unit also complained about disturbances caused by the tenant or the tenant's guests or occupants but that no written complaint was lodged. Rather, those former tenants moved out of the main rental unit.

The tenant was provided an opportunity to respond to the landlord's testimony and the witness' testimony. The tenant denied responsibility for the activities described by the landlord and the witness. The tenant called a witness to testify who acknowledged that the RCMP had attended the property on a number of occasions but claimed that the loud music was coming from the basement unit and not the tenant's rental unit. I heard that the tenant's witness is the former tenant of the basement unit and friend of the tenant or other occupants in the tenant's rental unit and the landlord and this former tenant are in dispute with respect to damages.

In response to the tenant's request for emergency repairs, I heard the tenant testify that the exterior decking is rotten and the stove elements do not fit properly causing greater risk of burns from the elements. The landlord stated he has not been notified of such issues by the tenant.

The tenant requested she be provided with contact information for the property owner with respect to her request for alternative service.

Analysis

Where a tenant is served a 10 Day Notice, the tenant must dispute the 10 Day Notice to End Tenancy or pay the outstanding rent within five days of receiving the Notice; otherwise, section 46 of the Act provides that the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date and the tenant will have to vacate the rental unit by that date. In this case, the tenant did not dispute the 10 Day Notice served upon her on July 7, 2009 or pay \$70.00 of the rent owed for July 2009 within five days of receiving the Notice.

Section 26 of the Act requires the tenant to pay rent in full when due in accordance with the terms of the tenancy agreement, regardless of whether the landlord violated the Act, regulations or tenancy agreement, unless the tenant has a right to deduct any amount from the rent. The tenant did not have authorization to deduct an amount from rent from a Dispute Resolution Officer and I heard disputed verbal testimony that the landlord had authorized the tenant to withhold \$70.00 from rent. I do not find disputed testimony to be sufficient to show the tenant had the right to deduct \$70.00 from the rent owed the landlord.

I did hear undisputed testimony that the tenant paid and the landlord deposited rent for August 2009. The issue of whether the landlord waived the 10 Day Notice has been considered. A Notice to End Tenancy may be waived (ie: withdrawn or abandoned) by express or implied consent of both parties. The parties' intentions to waive a Notice to End Tenancy may be demonstrated by communication between the parties and conduct by the parties. The landlord had previously communicated "use and occupancy" in issuing receipts prior in June 2009. The landlord did not issue any receipt for August 2009 rent; however, I find the conduct of the landlord has not indicative of a waiving the 10 Day Notice. Rather, I find the contrary as evidence by the Landlord's Application for Dispute Resolution that was filed and mailed to the tenant in July 2009. Therefore, I find that the 10 Day Notice issued by the landlord was not withdrawn by the landlord and is otherwise enforceable.

In light of the above, I am satisfied that the tenancy ended on July 17, 2009 based on the *10 Day Notice to End Tenancy for Unpaid Rent* served July 7, 2009 and since the tenant continues to reside in the rental unit the landlord is entitled to an Order of Possession. With this decision I provide the landlord with an Order of Possession effective two days after service of the Order of Possession upon the tenant. The Order of Possession may also be enforced in the Supreme Court of British Columbia as an Order of that court.

Based on the undisputed testimony, I find the landlord entitled to unpaid rent of \$70.00 and \$25.00 for a late fee with respect to July 2009 rent. As the landlord was successful in this application, the landlord is awarded the filing fee. In total, the landlord has established an entitlement to recover \$145.00 from the tenant for unpaid rent, a late fee and the filing fee paid for this application. The landlord is authorized to deduct \$145.00 from the tenant's security deposit in satisfaction of this award.

As the tenancy has ended by way of the 10 Day Notice, I have determined that it is not necessary to consider the merits of the 1 Month Notice. As the tenancy has ended, I do not provide any Orders for the landlord to make repairs, emergency repairs, or to comply with the Act. I did not hear sufficient evidence to warrant setting conditions

upon the landlord's right to enter the rental unit or that services or facilities are required for the remaining period of occupation by the tenant. As the tenancy has ended there is no need to consider a rent reduction for a future period. Rather, tenant's request for compensation for any non-compliance by the landlord before the tenancy ended will be addressed at the reconvened hearing.

I find no grounds to require the agent to provide the tenant with the property owner's contact information as the tenant is sufficiently able to contact the landlord's agent and the agent is bound by the terms of the tenancy agreement and the provisions of the Act.

Conclusion

The landlord has established that this tenancy has ended for the tenant's failure to pay rent in full and the landlord is provided an Order of Possession effective two days after service upon the tenant.

The landlord is authorized to deduct \$145.00 from the tenant's security deposit for unpaid rent, a late fee and recovery of the filing fee.

As the tenancy has ended, the tenant's requests have been dismissed without leave to reapply with the exception of the tenant's monetary claim which has been adjourned. Notices of Reconvened Hearing have been provided with a copy of this decision.

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: August 20, 2009.

Dispute Resolution Officer