

Decision

Dispute Codes: CNR, OLC, FF

Introduction

This hearing dealt with an application from the tenants for cancellation of the landlords' notice to end tenancy for unpaid rent, an order instructing the landlords to comply with the Act / regulation / tenancy agreement, in addition to recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the applicants are entitled to any or all of the above under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on September 1, 1999. Currently, rent in the amount of \$809.00 is payable in advance on the first day of each month, and a security deposit of \$330.00 was collected on or about August 18, 1999.

In the original tenancy agreement, "EWL" is named as the "tenant," while "EWL" and "RBL" are named as the "occupants." With the passage of time the unit was sold and while the tenancy between the current landlords and "EWL" continues, "RBL" is no longer an "occupant" in the unit.

Concerns of the current landlords include the relatively long-term stays of other "occupants" in the unit which have not been authorized by the landlords. The occupant who originally gave rise to the landlords' concern is "REL." However, during the hearing another occupant, "MS," was identified as another unauthorized "occupant."

With the intent to end to the unauthorized occupancy of "REL," the landlords issued a 10 day notice to end tenancy for unpaid rent dated November 10, 2009. However,

during the hearing the landlords acknowledged that there is no overdue rent and that this particular notice therefore has no force and effect in these circumstances.

During the hearing the landlords indicated their desire to have a written tenancy agreement in place which reflects the reality of the tenancy. For example, there was some discussion around whether the unit number is actually 3 or 30.

Further, the landlords indicated the desire that in the event the tenant wishes to have “occupants” become tenants, that the tenant assists the “occupants” to complete an application for tenancy.

For his part, the tenant identified his reluctance to sign a new / updated residential tenancy agreement that provides for a commitment to a fixed term, as opposed to a month-to-month tenancy.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve a resolution.

Analysis

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution. Specifically, it was agreed as follows:

- that while “REL” is not currently an “occupant” in the unit, neither will he will resume the status of an “occupant” by moving back into the unit;
- that the tenant(s) / applicant(s) withdraw the application (in the narrative submission) for compensation arising from costs incurred by “REL” for residing elsewhere subsequent to the landlords’ issuance of the notice to end tenancy;
- that current “occupant,” “MS” will vacate the unit by not later than 1:00 p.m., Sunday, February 28, 2010;

- that, following from the above, the landlords' will not require that "occupant" "MS" complete an application for tenancy.

Pursuant to the above, I order the parties to comply with the terms of their agreement.

Further, I hereby set aside the landlords' 10 day notice to end tenancy for unpaid rent. The tenancy therefore continues in full force and effect.

As the parties took the opportunity to settle the dispute during the hearing, I find that the tenant(s) / applicant(s) are entitled to recovery of half the \$50.00 filing fee. To this end I order that the tenant(s) / applicant(s) may withhold \$25.00 from the next regular payment of monthly rent.

For information, the attention of the parties is drawn to the following specific provisions in the Act and the Residential Tenancy Policy Guidelines:

Section 13: Requirements for tenancy agreements

Section 14: Changes to tenancy agreement

PART 4: How to End a Tenancy [Sections 44 to 57]

Guideline # 8: Unconscionable and Material Terms

Guideline # 13: Rights and Responsibilities of Co-tenants

Guideline # 19: Assignment and Sublet

The full text of the legislation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Conclusion

I hereby order the parties to comply with the terms of their agreement reached pursuant to section 63 of the Act.

The landlords' notice to end tenancy is hereby set aside, with the effect that the tenancy continues in full force and effect.

I hereby order that the tenant(s) / applicant(s) may withhold **\$25.00** from the next regular payment of monthly rent as the means for recovering half the \$50.00 filing fee.

DATE: December 21, 2009

Dispute Resolution Officer