



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, ERP, RP, RPP, RR, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking to cancel a 10 day Notice to End Tenancy for unpaid rent, for orders compelling the Landlord to make repairs, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Should the Notice to End Tenancy for unpaid rent be cancelled?

Is the Tenant entitled to the other relief sought?

Background and Evidence

According to the testimony of the Landlord, the Tenant was issued a 10 day Notice to End Tenancy for unpaid rent.

The Tenant testified she had not paid rent because of problems with the water service at the rental unit. She had not provided a copy of the 10 day Notice to End Tenancy or any other documents in evidence.

Analysis

Based on the above, the testimony and on a balance of probabilities, I find that the Tenant's Application must be dismissed.

The Tenant made an Application to cancel a Notice to End Tenancy for unpaid rent. However, she had not submitted in evidence a copy of the Notice she wanted cancelled.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing, and all were provided to the Tenant.

The Notice to End Tenancy document is not a mere technicality. In fact, it is hard to imagine another document being more relevant or material to the Tenant's claim, in particular when she is asking to have this document cancelled.

The responsibility of proving a claim is on the person making the claim. As the Tenant failed to provide a copy of the Notice, I find the Tenant has provided insufficient evidence to prove her claim.

The Tenant also admitted to not paying the rent. Under section 26 of the Act, the Tenant must not withhold payment of rent even if the Landlord is in breach of the Act or the tenancy agreement, unless the Tenant has an order or other authority under the Act to not pay rent. The Tenant had neither an order nor any other authority under the Act to withhold rent.

Furthermore, the Tenant provided no other documents in evidence in support of her case to have the Landlord make repairs. I find the Tenant had insufficient evidence to prove her claims.

Having made the above findings, I dismiss the Tenant's Application.

Following my dismissal of the Tenant's Application during the hearing, the Landlord orally requested an order of possession. Under section 55 of the Act, I must grant that request. I grant and issue the Landlord an order of possession effective two days after service upon the Tenant. This order is enforceable in the Supreme Court of British Columbia.

The Landlord must make his own Application for monetary claims.

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: June 07, 2010.

Dispute Resolution Officer