



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, FF
 CNR, MNDC

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee for this proceeding. At the beginning of the hearing however, the Landlord claimed that he served the Tenant with his application by posting it to the rental unit door on June 12, 2010. Section 89(1) of the Act requires a Party to serve an application for a Monetary Order either in person or by registered mail. Consequently, I find that the Tenant was not properly served with the Landlord's application for a Monetary Order and that part of his application is dismissed with leave to reapply.

The Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent or Utilities and for compensation for damage or loss under the Act or tenancy agreement. RTB Rule of Procedure 2.3 states that "if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply." I find that the Tenant's application for compensation is unrelated to her application to cancel a Notice to End Tenancy and as a result, that part of her application is dismissed with leave to reapply.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

The undisputed facts are as follows: The tenancy is a fixed term tenancy which started on February 1, 2010 and expires on July 31, 2010. Rent is \$900.00 per month payable in advance on the 1st day of each month. On June 3, 2010, the Landlord served the Tenant with a 10 Day Notice to End Tenancy dated June 2, 2010 by posting it to the rental unit door. The Tenant has not paid rent for June and July 2010.

The Tenant said she withheld rent for June and July because she believed that she was entitled to compensation equivalent to 2 months rent due to the Landlord "misrepresenting the conditions of the tenancy." The Tenant admitted that she did not

have an Order from the Residential Tenancy Branch authorizing her to withhold her rent.

Analysis

The Tenant argued that the Landlord had not served her properly with the 10 Day Notice because he served her prior to 5 days after rent was due. Section 46(1) of the Act states, however, that a Landlord may serve a Tenant with a 10 Day Notice “on any day after rent is due.” Consequently, I find that the Tenant was properly served with the 10 Day Notice to End Tenancy dated June 2, 2010.

The Tenant said she believed she could apply for compensation and have any amount awarded set off of the rent arrears for June and July 2010. However, s. 26 of the Act says “a Tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.” Furthermore, s. 66(2) of the Act states that the director may not extend the time limit under s. 46(4)(a) for a tenant to pay overdue rent unless the extension is agreed to by the Landlord or the Tenant has deducted the amount because the tenant believed the deduction was allowed for emergency repairs or under an order of the director.”

The Tenant admitted that she did not have an Order from the Residential Tenancy Branch authorizing her to withhold her rent for June and July, 2010 (which remains unpaid). As a result, I find that there are no grounds for the Tenant’s application to cancel the 10 Day Notice to End Tenancy dated June 2, 2010 and that part of her application is dismissed without leave to reapply. Accordingly, I find that the Landlord is entitled pursuant to s. 55(1) of the Act to an Order of Possession which will take effect 2 days after service of it on the Tenant.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia. 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: July 27, 2010.

Dispute Resolution Officer