



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNC, CNR, AS, OPR, OPC, MNR, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Tenants applied for more time to dispute a one month Notice to End Tenancy for cause, for orders to cancel Notices to End Tenancy for cause and for unpaid rent, for an order allowing the Tenants to assign or sublet the rental unit, and to recover the filing fee for the Application.

The Landlord applied to end the tenancy and for an order of possession based on unpaid rent and for cause, and for monetary orders for unpaid rent and to keep the security deposit.

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.

At the outset of the hearing, the issue of allowing the Tenants more time to dispute the one month Notice to End Tenancy was addressed. After testimony on the dates of service and the filings, I found the Tenants had filed their Application in accordance with the Act and therefore, more time to Apply was not required.

Issues(s) to be Decided

Should the Notice to End Tenancy for unpaid rent be cancelled or is it valid?

Should the Notice to End Tenancy for cause be cancelled or is it valid?

Background and Evidence

The Landlord testified regarding the one month Notice to End Tenancy for cause and the 10 day Notice to End Tenancy for unpaid rent.

The Landlord testified that the Notice to End Tenancy for cause was issued as the female Tenant had, without the Landlord's prior written consent, sublet the rental unit to the male Tenant. The Landlord testified that she and the female Tenant entered into a tenancy agreement in June of 2010. Sometime after this, the female Tenant moved out and allowed the male Tenant to move in. (The Tenants were apparently spouses at one time.) The Landlord testified that the male Tenant had also moved in before having the written permission of the manufactured home park, and did not have her written approval to move into the rental unit.

The Tenants applied to cancel the one month Notice on September 15, 2010. The male Tenant testified he had filled in the forms to be approved by the park, and acknowledged he moved into the rental unit before getting the approval of the park. He testified that the park knew he was already living in the rental unit before he filled out the required forms. He testified he was unaware that the park had to approve renters in the park.

In regard to the 10 day Notice to End Tenancy for unpaid rent, the Landlord testified that the Tenants had not paid the October 2010 rent. She testified that she personally served the Tenants with the 10 day Notice on October 3, 2010, for \$950.00 for unpaid rent. The Tenants amended their Application on October 7, 2010, to include the request to cancel this Notice.

The Landlord testified that on October 3, 2010, the male Tenant wanted to pay her only half of the October rent because the male Tenant was concerned that the Landlord was not going to return the security deposit to the Tenants. She testified she would not accept half of the rent and wanted the entire rent of \$950.00 paid at once.

The Tenant testified that he offered to pay the Landlord all the rent of \$950.00, however, the Landlord refused to issue him a receipt. The Tenant testified he was not going to pay \$950.00 in cash to the Landlord without getting a receipt.

The Tenant further testified he was concerned the Landlord was not going to return the security deposit to him and alleged the Landlord had already told him she would not return the security deposit at the end of the tenancy. The Tenant brought up the issue of a two month Notice to End Tenancy issued to him by the Landlord for her use, and

testified the Landlord was trying to avoid paying the one month of compensation due under this form of Notice and was not returning the security deposit. I note that the two month Notice to End Tenancy was not in issue before me in either Application.

The Landlord testified that on October 11, 2010, she returned to the rental unit after the Tenants told her they would pay the October rent. The Landlord testified that the male Tenant again refused to pay the entire amount of rent due and again wanted to only pay half of the rent. The Landlord testified she had a receipt made out for the Tenants in the amount of \$950.00. In evidence she submitted an original receipt made out to the Tenants for October 11, 2010, in the amount of \$950.00. This receipt is marked "void".

The male Tenant testified that when the Landlord came to the rental unit on October 11, 2010, he offered to pay her the \$950.00 in rent due, although the Landlord again refused to give him a receipt. He testified that the Landlord initially said she had no receipt book, and then went to her vehicle and came back with a piece of paper. He testified that he did not see the writing on the paper and was not sure it was a receipt so he did not give her the rent money.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the 10 day Notice to End Tenancy is valid, and that the Tenants have failed to pay rent for October of 2010.

I allow the Landlord's Application as I prefer the evidence of the Landlord over that of the Tenants. The Landlord is in the business of renting and I find, on a balance of probabilities, it is unlikely she would refuse \$950.00 in cash duly owed to her, for lack of receipt. I prefer the Landlord's testimony regarding the Tenant's offer to pay only half the rent, as it was supported by the demeanour of the male Tenant throughout the hearing, since he repeatedly brought up the issue of the security deposit when it was not a primary issue in this dispute.

I note the male Tenant had a witness he wanted to present at the hearing regarding the discussions at the door of the rental unit about the rent and the receipt. He testified this witness would verify he had \$950.00 in cash and was in the kitchen and could hear the conversation between him and the Landlord. However, I would not allow this witness, as the witness was not actually at the door, was not a party to the conversation, and was not seen by the Landlord at this time.

As I have found the 10 day Notice to End Tenancy is valid and enforceable, I grant the Landlord an order of possession effective at **1:00 p.m. on October 23, 2010**. This order is enforceable in the Supreme Court of British Columbia.

I also grant the Landlord a monetary order in the amount of **\$950.00** for October 2010 rent.

As described in the hearing to the parties, the security deposit is normally dealt with at the end of the tenancy. However, here the Landlord has been granted a monetary order and is holding a security deposit. Therefore, under section 72 of the Act, I allow the Landlord to keep the security deposit of **\$475.00**, in partial satisfaction of the claim, and I grant the Landlord an order for the balance of \$475.00, against the Tenants. This order is enforceable in the Provincial Court of British Columbia (Small Claims Division).

As the tenancy is ending under the 10 day Notice to End Tenancy, it is not required to make a finding on the one month Notice to End Tenancy for cause or on the other issues, and I dismiss the Application for Dispute Resolution of the Tenants.

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: October 21, 2010.

Dispute Resolution Officer