Decision

Dispute Codes: MT, CNC, MNR, MNDC, MNSD, OLC, ERP, RP, PSF, FF

Introduction

This hearing dealt with an application by the tenant for more time to make an application to cancel a notice to end tenancy; cancellation of a notice to end tenancy for unpaid rent or utilities; a monetary order as compensation for the cost of emergency repairs; compensation for damage or loss under the Act, regulation or tenancy agreement; return of the security deposit; orders instructing the landlord to comply with the Act, regulation or tenancy agreement / make emergency repairs for health or safety reasons / make repairs to the unit, site or property / provide services or facilities required by law; and recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

What is presently a month-to-month tenancy began on March 15, 2007. Rent in the amount of $800.00 is payable in advance on the first day of each month. A security deposit of $400.00 was collected at the outset of tenancy.

The landlord issued a 1 month notice to end tenancy for cause dated August 19, 2010. The notice was served by way of hand delivery to the tenant's mail box on that same date. A copy of the notice was submitted into evidence. Subsequently, the tenant filed an application to dispute the notice on August 30, 2010. The reason shown on the

notice for its issuance is that the "Tenant is repeatedly late paying rent." During the hearing the parties appeared to agree that rent was paid late for August 2010, however, there is no documentary evidence before me from either party in relation to any other occasions when the tenant may have been responsible for late payment of rent.

As to other aspects of the application, there is no documentary evidence before me in support of the tenant's claim(s), and the tenant stated that he is still in the process of compiling documentation. In the meantime therefore, with the exception of his application to have the notice to end tenancy set aside, the tenant presently withdrew all other aspects of his application. The parties agreed to meet later today in order to try to resolve these aspects of the dispute between them.

Analysis

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

Based on the documentary evidence and testimony of the parties, I find that the tenant's application to dispute the notice to end tenancy was filed within the 10 day period permitted following service of the notice. Accordingly, the tenant is not required to apply for more time to make an application to cancel a notice to end tenancy.

Residential Tenancy Policy Guideline # 38 addresses "Repeated Late Payment of Rent," and provides in part as follows:

> Three late payments are the minimum number sufficient to justify a notice under these provisions.

Based on the documentary evidence and testimony of the parties, I find that there is insufficient evidence of late payment of rent on at least three (3) occasions.

Accordingly, the notice to end tenancy is hereby set aside, and the tenancy continues in full force and effect.

As the tenant has succeeded in his application in regard to cancellation of the notice to end tenancy, I find he has established entitlement to recovery of the filing fee. I therefore order that the tenant may withhold $50.00 from the next regular payment of monthly rent for this purpose.

Conclusion

Pursuant to all of the above, the landlord's 1 month notice to end tenancy for cause is hereby set aside, with the result that the tenancy continues uninterrupted.

I hereby order that the tenant may recover the filing fee by way of withholding $50.00 from the next regular payment of monthly rent.

All other aspects of the tenant's application are hereby dismissed with leave to reapply.

DATE: October 12, 2010

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Dispute Resolution Officer