



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy pursuant to section 66; and
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. Both of the landlord's representatives gave sworn testimony that the female tenant handed the tenant the 10 Day Notice to End Tenancy for Unpaid Rent on October 2, 2010. The tenant gave sworn testimony that this did not occur on that date. She said that the female landlord's representative knocked on her door for 20 minutes that day while she was trying to put her child to sleep. The female tenant said that she did not receive the 10 Day Notice to End Tenancy until October 8, 2010, when she and a male friend found it slipped under her door. The tenant testified that she placed a copy of her application for dispute resolution in the landlord's office mailbox on October 20, 2010.

Section 89 of the *Act* outlines the special rules for service of certain documents to end tenancy for non-payment of rent and applications for dispute resolution. The landlords claim to have handed the 10 Day Notice to End Tenancy to the tenant which is allowed under section 89 of the *Act*. The tenant maintains that she found this document under her door, a method of service delivery that would not be allowed under the *Act*.

Although the method by which the tenant served the application for dispute resolution to the landlord is not one which is allowed under section 89(1) of the *Act*, the landlords

confirmed that they received a copy of the tenant's application. Based on the evidence presented, I accept that both parties were served with these documents.

The landlords made an oral request for an Order of Possession for unpaid rent if the tenant's application for cancellation of the notice to end tenancy were dismissed.

Issues(s) to be Decided

Is the tenant entitled to an extension of time to apply for dispute resolution? Is the tenant entitled to cancellation of the landlord's notice to end tenancy for unpaid rent? Is the landlord entitled to an Order of Possession?

Background and Evidence

This month-to-month tenancy commenced on July 4, 2009. Monthly rent is set at \$700.00, payable on the first of each month. The landlord continues to hold the tenant's \$350.00 security deposit paid some time after July 4, 2009.

The landlords testified that they issued the October 2, 2010 notice to end tenancy when the tenant did not pay her October 2010 rent. The male landlord provided undisputed testimony that the tenant's November 2010 rent cheque for \$700.00 was paid by the Ministry of Housing and Social Development's Employment and Assistance Office (the Ministry) and cashed by the landlord on October 27, 2010. He said that this rental payment was applied to the \$700.00 in rent owing for October 2010.

Analysis

Tenant's Application for More Time to File Application for Dispute Resolution

There was a significant difference in the evidence presented by the parties regarding the date and method by which the landlord served the tenant with the notice to end tenancy. The tenant asked that a witness who found the landlord's notice under her door be contacted during this hearing. Although attempts were made to contact her witness at his number, we were unable to contact him. The timing of the landlord's notice to end tenancy becomes important as the tenant has only five days to either pay

the rent owing or file an application for dispute resolution. The tenant's application for dispute resolution was not filed until October 12, 2010. If the landlords were correct in their assertion that they handed the tenant this notice on October 2, 2010, the tenant did not file her application within the five-day period. If the tenant were correct in her assertion that she did not receive this application until October 8, 2010, she filed her application within the five-day period.

In considering this matter, I also note that the landlord filed a Direct Request application on October 12, 2010 seeking an Order of Possession. The tenant said she was somewhat confused by the two applications and thought that she needed to apply for more time in her application when she learned that the landlord was seeking an Order of Possession by way of the Direct Request process.

I find that there is equally convincing evidence from both parties regarding the timing of the service of the landlord's notice to end tenancy. Under the circumstances, I have allowed the tenant's application for more time to submit her application for dispute resolution and have considered the merits of her application on that basis.

Tenant's Application for Cancellation of the Landlord's Notice to End Tenancy

There is undisputed evidence that the tenant did not pay the \$700.00 in rent due on October 1, 2010. Although I have granted an extension of time for her application for dispute resolution, no payments were received by the landlord for this rental unit until the Ministry forwarded the November 2010 payment. The tenant testified that the Ministry erred in failing to discontinue rental payments to the landlord, as it had been her intention to vacate the premises by then. She said that she had asked the Ministry to try to recover the rental payment it made on her behalf in late October 2010 for the November rental of this property. She said that her efforts to rent alternative accommodations had been hampered by the Ministry's inadvertent release of her November 2010 rental payment to the landlord.

Although the landlord failed to issue a receipt or to advise the Ministry that the October 27, 2010 rent payment had been applied to the outstanding October rent, I find that the tenant had no intention of continuing rental payments to the landlord by late October 2010 and thus continuing her tenancy. The tenant did not maintain that the landlord had continued this tenancy by accepting the Ministry's rental payment intended for November 2010. Rather, the tenant testified that she intended to vacate the rental premises within a few days of the hearing and move to her mother's property.

Under these circumstances, I find that the tenant did not intend to continue this tenancy into November 2010, nor did she intend to pay the outstanding rent cited in the landlord's notice to end tenancy. I dismiss the tenant's application to set aside the landlord's 10 day notice.

Order of Possession

At the hearing, the landlord requested an Order of Possession if the tenant's application for cancellation of the Notice to End Tenancy were dismissed. This request was made in accordance with section 55(1) of the *Act* which reads in part as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice...

The landlord is provided with a formal copy of an Order of Possession effective at one o'clock in the afternoon on November 14, 2010. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Conclusion

I allow the tenant's application for more time to apply for dispute resolution. I dismiss the tenant's application to cancel the landlord's notice to end tenancy. I grant the landlord an Order of Possession effective on November 14, 2010.

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*.