



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, CNC, OLC, AS

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause, to cancel a Notice to End Tenancy for Unpaid Rent, to seek the Landlord to comply with the Act, regulations or tenancy agreement and to allow a tenant to assign or sublet because the landlord's permission has been unreasonable withheld.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the "hearing package") by posting it on the Landlord's door on September 23, 2010. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to cancel the Notices to End Tenancy?
2. Is the Tenant entitled to an Order to make the Landlord comply with the Act?
3. Is the Tenant entitled assign or sublet the rental unit?

Background and Evidence

This tenancy started on November 23, 2009 as a month to month tenancy. Rent is \$850.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$425.00 on November 23, 2009.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated September 2, 2010. He served the Notice on September 2, 2010 by personal delivery to an adult living in the rental unit. The effective vacancy date on the Notice is October 3, 2010. The Landlord said that the Tenant and her family were noisy, they do not clean up garbage at the unit and are disturbing the neighbourhood with their cars and late night partying. The Landlord provided two witnesses from the neighbourhood to testify. Witness 1; M. said the Tenant and her family were noisy, dirty and disturbed the neighbourhood by driving noisy cars late at night and littering the neighbourhood with garbage. Witness 2; C.M. said the Tenant and her family have changed the neighbourhood because they are loud, dirty and rude. Both witness said the Tenant's sons make loud noises with their cars late at night.

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As well the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on September 16, 2010. He served the Notice on September 16, 2010 by personal delivery to an adult living in the rental unit. The effective vacancy date on the Notice is September 26, 2010. The Landlord said that the Tenant has not paid the rent for September, 2010 and October, 2010.

The Tenant said the Landlord is lying about the unpaid rent. She said she paid the rent on September 1, 2010 in cash and she has witnesses to confirm this. The Tenant said the witnesses were not available for the hearing. She continued to say that she paid the rent in cash and the Landlord would not give her a receipt for it. The Landlord said they were not paid and they had given the Tenant receipts for cash payment on pervious rent payments. The Tenant said she had received receipts for previous cash rent payments. The Landlord also said they served the notice on September 16, 2010 as the rent payment time had been changed to the 15 of the month on July 15, 2010. The Landlord questioned why the Tenant said she paid the rent on September 1, 2010 if it was not due until September 15, 2010. The Tenant said the Landlord had come to her door and demanded the rent on September 1, 2010. The Landlord said this was not true.

The Tenant continue to say that the Landlord had it out for her and her family and the neighbours were friends of the Landlord so they would say whatever the Landlord asked them to say. The Landlord provided 4 written witness statements that said the Tenant and her family were loud, that they threw litter on the street and drove loud cars. The Tenant said the neighbours and Landlord were making false accusations about her and her family. The Tenant said that the police had been called out to her house for noise complaints and she was told it was a Residential Tenancy Branch matter and not Police a matter. The Tenant said this shows that the complaints against her and her family were not right.

The Tenant said that she had no proof that she paid the rent in September and October, 2010, except her witnesses. She was asked to contact them so they could phone into the hearing. She said they were not available and they did not phone into the hearing.

The Tenant also said she applied for the Landlord to comply with the Act so that repairs would be made to the rental unit in a timely manner and that she would be able to use the laundry facilities again. The Landlord said he stopped letting the Tenant use the laundry as he believed the Tenant broke the washer and she should pay for the new washer. The Landlord said when the Tenant pays for the washer she can use the laundry again. The Tenant said that the laundry was included in the tenancy agreement and she should be able to use it.

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The Tenant continued to say she applied to allow a tenant to assign or sublet so she could add her son A.S. to the tenancy agreement. There was contradictory evidence regarding the tenancy agreement and amended tenancy agreement. The Tenant said that her son A.S. was added to the tenancy agreement on March 15, 2010 and the rent due date was changed July 15, 2010 to the 15th of the month. The Landlord said they had not agreed to add A.S. to the tenancy agreement and the Tenant had written his name into her copy of the agreement without their knowledge of it. The Landlord did say they agreed to the change on rent payment date to the 15th of the month on July 15, 2010.

The Landlord concluded their remarks by requesting an Order of Possession if the Tenant application to cancel the Notices to End Tenancy were not successful.

Analysis

Section 26 (1) and (2) says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

The evidence and testimony regarding whether the rent was paid for September and October, 2010, is contradictory. The Landlord said they have provided receipts to the Tenant for cash rent payments in previous months and the Tenant agreed that she had some receipts given to her for cash rent payments. The Tenant said she asked for a receipt for September and October, 2010, but the Landlord would not give her one. The Landlord says this is untrue as the rent was not paid. The Landlord said that they waited until September 16, 2010 to issue the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which is the day after the rent is due and unpaid. The Landlord's evidence and testimony is more consistent than the Tenant's testimony saying the rent was pay on September 1, 2010, 15 days before it was due and she has no proof of paying it. As the Tenant has no rights under the Act to deduct all or a portion of the rent, I find for the Landlord that the September and October, 2010 rent was not paid. As it is the application of the Tenant to dispute the Notices to End Tenancy it is the Tenant's duty to prove the rent was paid. The Tenant has not provided any proof the September and October, 2010 rent was paid. Consequently, I find that the Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed without leave to reapply.



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The Landlord requested an Order of Possession at the Hearing and since the Notice to End Tenancy is not canceled, I find pursuant to s. 55(1)(a) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

As for the other claims on the Tenant's application, to cancel the Notice to End Tenancy for Cause, require the Landlord to comply with the Act and to allow the Tenant to assign or sublet the rental unit, these claims are extinguished with the end of the tenancy brought on by the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the Order of Possession. I find the Tenants application is dismissed without leave to reapply.

Conclusion

I find that the Tenant's application is dismissed without leave to reapply.

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: the Order of Possession 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*.

Dispute Resolution Officer