



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing dealt with cross applications. The tenant applied to cancel a Notice to End Tenancy for Unpaid Rent. The landlord applied for an Order of Possession and Monetary Order for unpaid rent for the month of November 2010. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party with respect to matters relevant to this dispute.

Both parties confirmed they were served with the Application for Dispute Resolution filed by the other party and Notice of Hearing; however, the tenant denied receiving the landlord's evidence package. I proceeded to accept verbal testimony from both parties and reviewed the Notice to End Tenancy provided by both parties as evidence. I determined the Notices to End Tenancy provided to me were identical copies and accepted and considered the Notices to End Tenancy.

Issue(s) to be Decided

1. Should the Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?
3. Is the landlord entitled to a Monetary Order?

Background and Evidence

The parties provided undisputed evidence as follows. The tenancy commenced October 28, 2010 and the tenant paid a \$400.00 security deposit by way of a cheque dated October 4, 2010. The tenant is required to pay rent of \$800.00 on the 1st day of every month under the tenancy agreement. The tenant provided the landlord with a cheque dated October 27, 2010 for November's rent and the cheque was returned for insufficient funds. The landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door on December 16, 2010. The Notice indicates that \$800.00 was outstanding as of November 1, 2010.

The tenant submitted that on November 25 or 26th she did pay November's rent by giving the landlord cash in the presence of a witness. The tenant submitted that she withdrew the funds from her bank account to pay the rent after receiving her monthly income assistance. The landlord denied receiving cash from the tenant for November 2010 rent.

The tenant claimed that her witness was still asleep and could not be woken to testify at this hearing. Upon enquiry, the tenant claimed that she had bank records to show the cash withdrawal she made for the rent payment but that she did not know to provide documentary evidence for this hearing.

Other than the security deposit cheque the landlord was able to cash the tenant's rent cheque dated December 15, 2010. The tenant submitted that the funds for the December 15, 2010 cheque were from her income assistance for the benefit month of January 2011. I refused to hear this matter further as the landlord had not applied for compensation for any month other than November 2010 and the payment was made before the Notice to End Tenancy was issued on December 16, 2010.

Analysis

Upon review of the Notice to End Tenancy, I find that the Notice to End Tenancy dated December 16, 2010 is otherwise valid and was sufficiently served upon the tenant. The tenant disputed the Notice within the time limits permitted by the Act. Where a tenant disputes a Notice to End Tenancy for Unpaid Rent, it is upon the tenant to show that the rent was paid or that the tenant had the right to withhold rent.

The issue to determine in this case is whether the tenant paid rent in cash for the month of November 2010 as the tenant claims. Since the landlord cannot be expected to prove something did not happen, it is upon the tenant to show that she did pay the rent that she is accused of not paying.

In this case, I was provided disputed verbal testimony that the tenant paid the rent for November 2010 in cash on November 25 or 26, 2010. In the absence of witness testimony, the tenant's bank records, or any other evidence that would corroborate the tenant's version of events, I find the tenant has not sufficiently proven that she paid the rent as she claims.

In light of the above, I uphold the Notice to End Tenancy and provide the landlord with an Order of Possession to serve upon the tenant. The Order of Possession is effective

two (2) days after service upon the tenant and may be enforced in The Supreme Court of British Columbia as an Order of that court.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed for November 2010 and I provide the landlord with a Monetary Order for the balance of \$400.00 plus \$50.00 for recovery of the filing fee paid for this application. The Monetary Order must be served upon the tenant and may be enforced in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the security deposit and has been provided a Monetary Order in the amount of \$450.00 to serve upon the tenant.

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: January 18, 2011.

Residential Tenancy Branch