



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MT, CNR, CNC, OPT, AAT, LAT, MNDC, O, SS

Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a One Month Notice to End Tenancy for Cause, for an Order of Possession, for an Order allowing the Tenant access to the rental unit for herself or her guests, for an Order authorizing the Tenant to change the locks, for compensation for damage or loss under the Act or tenancy agreement and for an Order permitting the Tenant to serve documents in a different way than required under the Act.

At the beginning of the hearing the Parties confirmed that all 10 Day Notices served on the Tenant had been cancelled by her paying the outstanding rent within 5 days of receiving those Notices and as a result, that part of the Tenant's application is dismissed without leave to reapply. I find that the Tenant filed her application to cancel the One Month Notice to End Tenancy for Cause within the 10 days granted under s. 47(4) of the Act and as a result, her claim for more time to file is also dismissed without leave to reapply. I further find that an order is not required authorizing the Tenant to serve documents in a different way than required by the Act and that part of her application is dismissed without leave to reapply. Similarly, as the tenancy has not ended, there is no need for the Tenant to seek an Order of Possession and that part of her application is dismissed without leave to reapply.

RTB Rule of Procedure 2.3 states that "if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard, I find that the Tenant's application for compensation is unrelated to her application to cancel a Notice to End Tenancy for Cause and it is dismissed with leave to reapply.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is the Tenant entitled to change the locks to the rental unit?
3. Is an Order necessary for the Tenant to have access to the rental unit?

Background and Evidence

This month-to-month tenancy started on September 1, 2010. Under the terms of the Parties' written tenancy agreement, rent is \$351.00 per month payable in advance on the 1st day of each month.

On December 31, 2010, the Landlords served the Tenant with a One Month Notice to End Tenancy for Cause dated December 31, 2010 by posting it to the rental unit door. The grounds alleged on the Notice were as follows:

- The Tenant is repeatedly late paying rent;
- The Tenant or a person permitted on the residential property by the Tenant has
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The Landlords said the Tenant's rent cheques for October, November and December 2010 and for January 2011 were all returned for non-sufficient funds. The Landlords provided copies of the returned cheque notices for October, November and December 2010 from its financial institution which were dated October 4, 2010, November 2, 2010 and December 3, 2010 respectively. The Parties agree that the Tenant was served with 10 Day Notices dated November 10, 2010, December 17, 2010 and January 4, 2011. The Tenant said she paid the outstanding rent for October once the Landlord advised her that her cheque had been returned. The Tenant also said she paid the outstanding rent for November and December 2010 and for January 2011 within 5 days of receiving the 10 Day Notices for those NSF rent payments.

The Tenant initially said her rent payments were returned for non-sufficient funds because a direct deposit to her bank account for each of those months was not made in time. The Tenant then claimed that the Landlords frustrated her ability to pay on time. In particular, the Tenant claimed that an agent of the Landlords (K.S.) led to believe that the Landlord had its own parking area where she could park her motor home but was later advised that the parking area belonged to the adjacent hospital. The Tenant said the Landlords later demanded that she move the motor home and when she did not, it was towed which caused her to incur additional expenses and to be unable to make her rent payments on time.

Analysis

RTB Policy Guideline #38 says "three late payments are the minimum number sufficient to justify a notice under these provisions." I find that the Tenant was late paying rent on 4 occasions: October, November and December 2010 and January 2011.

Although the Tenant argued that she paid the overdue rent within 5 days of receiving the 10 day Notices, those Notices do not operate to extend the time to pay the rent. The rent is due on the first day of each month as specified in the Parties' tenancy agreement. The Tenant also argued that her rent payments were late due to a misrepresentation of the Landlords which frustrated her ability to make payments on time. However this argument is not a reason that would excuse the late payments. A Tenant is responsible for paying rent when it is due regardless of their other financial obligations or circumstances.

Furthermore, I do not give much weight to this argument in part, because the Tenant initially claimed that her inability to make her rent payment on the 1st of each month was due to another party's not depositing funds into her bank account when she expected them. This would explain why the Tenant's rent cheque for October 2010 was returned for insufficient funds *prior* to her incurring any expenses related to her motor home being towed. It was only later in the hearing that the Tenant claimed that it was the Landlords' misrepresentation about parking that caused her to incur financial hardship. However, the Landlord warned the Tenant early in the tenancy and for a period of 5 weeks thereafter that if she did not put storage or some other insurance on the motor home that it would be towed. The Parties' then signed a tenancy agreement on October 15, 2010 which states (at clause #23) that ***the Landlord does not provide parking but if parking is available the tenant may only park operative, licensed and insured vehicles and that any improperly parked vehicles will be towed at the tenant's expense.*** The Tenant admitted that approximately 2 weeks later (or the day the motor home was towed) she began "looking into insurance."

In any event, I make no binding finding of fact as to whether there was a misrepresentation about parking as the Tenant alleges as that will form part of her claim for compensation for which she has been granted leave to reapply. As the tenancy will be ending, I find that the Tenant's application for an Order permitting her to change the locks and to grant either her or her guests' access to the rental unit is unnecessary and they are dismissed without leave to reapply.

Conclusion

The Tenant's application for compensation is dismissed with leave to reapply. The balance of the Tenant's application is dismissed without leave to reapply. An Order of Possession to take effect on February 28, 2011 has been issued to the Landlords. A copy of the Order must be served on the Tenant and 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*.

Dated: January 27, 2011.

Residential Tenancy Branch