



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, OLC, OPT

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for unpaid rent, for an Order of Possession for the Tenant and for the Landlord to comply with the Act.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on January 19, 2011. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Is the Tenant entitled to an Order of Possession?
3. Has the Landlord Complied with the Act?

Background and Evidence

This tenancy originally started with the Tenant’s mother on August 1, 2001 and the Applicant was an occupant of the rental unit for the last 10 to 11 years. The Applicant said he did pay rent to his mother during that time. The Tenancy ended when the Tenant’s mother died in October, 2010. The Landlord permitted the Applicant to continue to live in the unit for November and December and the Landlord issued rent payment receipts for “use and occupancy only” to the estate of the Tenant’s mother.

The Landlord said the Mother’s estate did not pay the rent in January, 2011 when it was due and the Estate told the Landlord that the Estate was not going to pay the rent any more. The Landlord continued to say the Applicant did not pay the rent for January, 2011 either and as a result the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent dated January 14, 2011.

The Applicant said he is living in the rental unit and he approached the Landlord in December, 2010 about establishing a tenancy. He said the Landlord did not want to establish a tenancy with him, so he continued to live in the unit as an occupant.

The Applicant said he did not pay the January rent and neither did his Mother's estate, so he agreed the rent was unpaid for January, 2011. The Applicant said he needed some time to make arrangements to find a new place to live.

The Landlord said they wanted an Order of Possession if the Applicants application was unsuccessful. The Landlord also said if they receive an Order of Possession they would be will to give the Applicant until February 15, 2011 to vacate the rental unit.

Analysis

From the testimony of both the Landlord and the Applicant, both said the tenancy agreement was with the Applicant's mother and the Landlord and the Applicant sublet from his mother, therefore I find there is no tenancy agreement between the Applicant and the Landlord. Consequently the receipts for use and occupancy that the Landlord issued show their intent to end the tenancy with the Mother's Estate and the Applicant. I find, the Landlord has established grounds to end the tenancy when the Mother's Estate and the Applicant did not pay the rent for January, 2011.

Section 26(1) 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.

The Tenant or Applicant does not have the right to withhold all or a portion of the rent from the Landlord when it is due therefore; I find the Tenant and the Applicant have not established grounds to be granted an order to cancel the Notice to End Tenancy. The Landlord's 10 Day Notice to End Tenancy dated January 14, 2011 stands in effect.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective February 15, 2011, after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession 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*.

Residential Tenancy Branch