



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, RP, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for unpaid rent, for an order to make repairs and to recover the filing fee for this proceeding.

The Tenant said she 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.

During the Hearing the Dispute Resolution Officer informed the Tenant that the application is to contest a Notice to End Tenancy for Unpaid Rent and the application for repairs to the property by the Tenants is a separate and unrelated dispute to this application. In section 2.3 of the Residential Tenancy Branch Rules of Procedure (Dismissing unrelated disputes in a single application) a Dispute Resolution Officer may dismiss unrelated disputes within an application. The Tenants’ application for repairs to the property is dismissed with leave to reapply.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on September 1, 2010 as a month to month tenancy. Rent is \$1,500.00 per month payable in advance of the 3rd day of each month. The Tenant paid a security deposit of \$750.00 in September 2010.

The Tenant said the Landlord served her with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated January 10, 2011. The Landlord said she personally delivered the Notice to End Tenancy on January 10, 2011, but the Tenants were not at home so she left it in the mail box. The Tenant said she received the Notice to End

Tenancy. The Effective Vacancy date on the Notice is January 20, 2011. The Tenant said they are living in the rental unit.

The Tenant continued to say that she agrees that she has unpaid rent of \$200.00 for November, 2010 and \$1,500.00 for January, 2011. The Tenant continued to say she has tried to contact the Landlord to make arrangements for the rent, but she said the Landlord was not available. The Tenant said she would like time to pay the rent as her husband is working in Alberta and she is expecting some money in two to three weeks.

The Landlord said that two to three weeks to wait to be paid the rent was not going to work for her and she requested an Order of Possession as soon as possible if the Tenants' application to cancel the Notice to End Tenancy was unsuccessful.

Analysis

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.

As both parties agree there is unpaid rent and the Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it was due; I find the Tenant has 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 10, 2011 stands in effect.

As the Tenants were not successful in this matter their request to recover the filing fee for this proceeding is dismissed without leave to reapply.

Conclusion

The Tenant's application to cancel the 10 Day Notice to End Tenancy dated January 10, 2011 is dismissed without leave to reapply.

An Order of Possession effective two days after service of the Notice on the Tenants has been issued to the Landlord. A copy of the Order must be served on the Tenants 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