



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, OPR, MNR, MNDC, FF

Introduction

This was the hearing of applications by the tenants and by the landlord. The applications were heard together by conference call. The tenants applied to cancel a 10 day Notice to End Tenancy for unpaid rent. The landlord applied for an order for possession and a monetary order. The landlord and the named tenant called into the conference call and participated in the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled? Is the landlord entitled to an order for possession?

Is the landlord entitled to a monetary order and if so, in what amount?

Background and Evidence

The rental unit is a house and garage in Chilliwack. The landlord testified that he advertised the unit for rent on Craigslist. On November 22, 2010 the male tenant contacted him and the male tenant with his son met him at the rental property. The female tenant, N.W. was not present at this meeting. The landlord agreed to rent the house to the tenants at a monthly rent of \$1,100.00. The tenants were to pay their own utilities. He testified that he and the male tenant had a mutual acquaintance. Because the tenant was known to his acquaintance he agreed to allow the tenants to move in immediately and to start paying rent on December 1, 2010. The landlord does not live in Chilliwack and he was anxious to rent the house so that he could return to his home in another community to go to work. The tenant said that he did not have the rent at the time but he would mail the rent to the landlord on December 1, 2010. The landlord did not collect a security deposit. He was prepared to allow the tenant to stay in the house rent free for the rest of November and trusted the tenant to mail him a cheque for December's rent.

The landlord testified that when he did not receive any rent cheque by mail on December 2, 2010 he telephoned the tenants. The tenant N.W. told him that she had mailed the cheque to him. The landlord waited until December 7th and then called again; once again N.W. assured him that she mailed a cheque. She suggested that it might have been delayed because of Christmas mail. When no cheque had arrived by December 14, 2010 the landlord called again. He testified that this time N.W. told him: "I've got your money". She offered to deposit it in his bank. The landlord told that her he would come down to Chilliwack. The landlord said that on December 15th N.W. told him the money was not in her account; she said her former landlord must have taken it out of her account.

The landlord testified that he was staying in his camper in the driveway of the rental property. He said that when no rent had been paid by December 20th he removed the tenants' belongings from the house because in his view they were not tenants, having paid nothing for rent. The tenants called the police. The landlord testified that the police told him he could only evict the tenants by applying to the Residential Tenancy Office. The landlord testified that he is not particularly literate and he enlisted the help of his neighbour to complete a 10 day Notice to End Tenancy for unpaid rent that he served on the tenant, J.I. on December 20, 2010.

The tenant N.W. testified that on December 15, 2010 she paid the landlord \$1,100.00 in cash. She said that he did not give her a receipt. She then testified that she met the landlord on November 22, 2010 and paid him \$550.00 for a security deposit for which she did not get a receipt.

The tenant said that when they objected to the landlord parking his camper in the driveway he threw their belongings out of the house and then served them with a Notice to End Tenancy for unpaid rent. The tenant did not provide any bank records or withdrawal statements to verify that she obtained \$1,100.00 in cash to pay to the landlord on December 15, 2010. The tenant did not deny having told the landlord that she mailed a cheque to him. She did not explain why she told him she had mailed a cheque and later on December 15th told him that she had his rent money to give to him.

Analysis and Conclusion

I accept and prefer the testimony of the landlord to that of the tenant. The landlord presented his testimony in a forthright manner. He did not hesitate to give evidence against his own interest when he testified that he had acted to remove the tenant's belongings from the house without authority and then after the police attended allowed them to move back into the rental unit. The landlord's conduct is consistent with his

testimony that he trusted the tenants but failed to receive any rent from them. The tenant attempted to deceive the landlord by telling him that she mailed a rent cheque to him when in fact she had not. The tenants made no mention of paying a security deposit in their written submission. I do not accept the tenant's evidence that she met with the landlord on November 22, 2010, or that she paid a security deposit in any amount.

I accept the landlord's evidence that he agreed to rent the house to the tenants at a monthly rent of \$1,100.00. I find that the tenants have occupied the rental property without paying rent from November 22, 2010 onwards. Although the tenant applied to dispute the Notice to End Tenancy I find that she has not paid the rent due to the landlord for the months of December and January and there is no basis to cancel the Notice to End Tenancy. The tenant's application is therefore dismissed without leave to reapply. The landlord applied for an order for possession and having dismissed the tenant's application to cancel the Notice I find that the landlord is entitled to an order for possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord has established a claim for unpaid rent totalling \$2,200.00 for the rent due for the months of December, 2010 and January, 2011. The landlord is entitled to recover the \$50.00 filing fee for this application for a total claim of \$2,250.00 and I grant the landlord an order under section 67 for the balance in the said amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: January 18, 2011.
