



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, OPT

Introduction

This hearing dealt with an application by the tenant to cancel a 10 day notice to end tenancy for unpaid rent and obtain an order of possession. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This tenancy began approximately 11 years ago and the tenant pays current rent of \$550.00. On February 7, 2011 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

The tenant testified that the amount of rent due on the notice, \$465.00, is incorrect and that he does not know how the landlord made this calculation and what amount is past due. The tenant stated that the ministry pays \$375.00 directly to the landlord each month and he pays the balance due by cash but that the landlord does not provide a receipt. The tenant does not dispute that he owes the landlord unpaid rent. The tenant stated that the landlord's husband advised him verbally a few weeks ago that his rent was being raised to \$575.00. The tenant stated that the landlord did not provide him with notice of a rent increase.

The tenant stated that the landlord has received a rent payment for the month of March 2011 in the amount of \$375.00.

The landlord testified that the tenant is chronically late when paying rent and stated that they "want him out". The landlord did acknowledge that they have not been providing the tenant with receipts for cash payments. The landlord acknowledged that they have not provided the tenant with proper notice for the current or past rent increases.

The landlord stated the tenant paid \$100.00 cash towards the January 2011 rent but has not paid any monies towards the February or March 2011 rent due. Based on the

monthly rent of \$550.00 per month, the tenant owes the landlord the following in unpaid rent:

January: Ministry \$375.00, Tenant \$100.00 balance due: \$75.00
 February: Ministry \$375.00, Tenant \$0.00 balance due: \$175.00
 March: Ministry \$375.00, Tenant \$0.00 balance due: \$175.00
Total rent due from tenant \$425.00

Law

Residential Tenancy Fact Sheet RTB-124 Re-Instatement of Tenancies speaks to:

When a landlord does not want the tenancy to continue, the landlord must:

1. *Clearly tell the tenant that the payment of rent outside the 5 day period, or payment of some of the rent within the five 5 day period, does not cancel the Notice;*
2. *Specifically tell the tenant that the rental payment is being accepted for the use and occupancy only and does not reinstate the tenancy; and*
3. *Tell the tenant of one of the following options:*
 - *The tenant must vacate in accordance with the Notice to End Tenancy, or*
 - *The tenant must vacate at the end of the month.*

If a dispute arises, the landlord must prove the payment was accepted for use and occupation only and not to reinstate the tenancy. Therefore, the landlord should advise the tenant, in writing, that the tenancy is not being reinstated and the tenant must vacate.

Residential Tenancy Regulation Part 4 Rent Increases, Section 22 Annual rent increase speaks to:

(1) *In this section, "**inflation rate**" means the 12 month average percent change in the all-items Consumer Price Index for British Columbia ending in the July that is most recently available for the calendar year for which a rent increase takes effect.*

(2) *For the purposes of section 43 (1) (a) of the Act [amount of rent increase], **a landlord may impose a rent increase that is no greater than the percentage amount calculated as follows: 3.2%.***

Residential Tenancy Act Section 26 Rules about payment and non-payment of rent speaks to:

(1) *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.*

(2) *A landlord must provide a tenant with a receipt for rent paid in cash.*

(3) *Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not*

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

Analysis

Based on the documentary evidence and testimony I find that the 10 Day Notice to End Tenancy for Unpaid Rent is invalid as the landlord re-instated the tenancy after accepting rent from the tenant and failed to provide the tenant a receipt stating *'for use and occupancy only, does not reinstate tenancy'*.

I therefore allow the tenant's application and set aside the landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated February 7, 2011 with the result that the tenancy continues uninterrupted.

Based on the testimony from both parties I find that been a number of issues with this tenancy and how business is conducted and I hereby Order that the landlord comply with Section 26 of the *Act* and provide the tenant with a receipt for all cash payments.

I also Order that the landlord comply with Part4, Section 22 of the *Regulation* and provide the tenant with proper notice, on the approved form for any proposed rent increase. Until such time as the landlord completes the proper process for increasing rent, the tenants rent will remain at \$550.00 per month.

Conclusion

I therefore allow the tenant's application and set aside the landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated February 7, 2011 with the result that the tenancy continues uninterrupted.

The tenants rent will remain at \$550.00 per month until such time as the landlord completes the proper process for a rent increase.

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: March 1, 2011

Residential Tenancy Branch