



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for Cause 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 personal delivery on March 3, 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 parties in attendance.

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 April 1, 2010 as a fixed term tenancy with an expiry date of June 30, 2010 and then it renewed as a month to month. Rent is \$800.00 per month payable in advance of the 1st day of each month. The Landlord said there is a security deposit of \$400.00 that was paid by a previous tenant, but this Tenant has not paid a security deposit. The Tenant's advocate said the Tenant agreed with this.

The Landlord said she served the Tenant with a 1 Month Notice to End Tenancy for Cause dated February 25, 2011. She served the Notice on February 25, 2011 at the Tenants rental unit by sliding it under the door. The Occupant said they received the Notice. The Effective Vacancy date on the Notice is March 31, 2011. The Occupant is living in the unit and the Landlord requested an Order of Possession if the Tenant's application is unsuccessful.

The Landlord said the Notice to End Tenancy was issued for two reasons; firstly the Tenant has significantly interfered with other tenants and the Landlord and secondly the Tenant has been repeatedly late with the rent on a number of occasions.

The Landlord continued to say that the Tenants has unpaid rent of \$225.00 for March, 2011. The Landlord said they have issued a 10 Day Notice to End Tenancy for Unpaid

rent dated March 3, 2011. As well the Landlord has issued 10 Notices to End Tenancy for unpaid rent for December, 2010, January, 2011 and February, 2011. The Landlord continued to say that they did issue a receipt for a part payment of the March, 2011 rent which indicates the receipt is for occupancy and does not reinstate the tenancy agreement. The Landlord said this is proof that the Tenant has been repeatedly late with the rent payments. The Landlord said the rent is due on the 1st day of each month.

The Landlord continue to say they have submitted two emails of complaint from other tenants indicating the Occupant's behaviour has significantly interfered with their quiet enjoyment of their rental unit. The first is dated March 1, 2011 and complains of screaming and yelling in the rental complex by the Occupant. The second is dated March 5, 2011 and complains of ongoing noise and smoking issues caused by the Occupant from December, 2010 to the present.

The Landlord also said the Occupant attended a meeting at the Landlord's office and the Landlord said the Occupant appeared to threaten the Landlord with violence. The Landlord said she called the Police and told the Tenant that the Occupant was not welcome in the Landlord's office anymore. The Landlords continued to say that they felt threatened and had concerns for their safety as well as the safety of the other tenants in the rental complex.

The Tenant's advocate said the Occupant had been attacked the week end prior to the meeting with the Landlords and as a result she was very emotional and did not mean to be threatening to the Landlords. The Tenant's advocate said the Occupant and the Tenant were at the meeting with the Landlord to make a complaint about the attack on the Occupant and they were unaware that there was anything wrong with the tenancy. The Tenant's advocate continued to say that the Landlord had not written the Tenant or the Occupant a letter to complaint or warning them about tenancy problems and no letter regarding a breach of the tenancy has been written to either the Tenant or the Occupant. As a result the Tenant's agent said the Tenant and the Occupant did not realize there was a problem in the tenancy.

The Tenant's advocate continued to say that the Landlord had made an agreement with the Tenant to pay the rent bi-monthly and that he should ignore the 10 Day Notices to End Tenancy for Unpaid Rent that the Landlord was issuing to him and the Occupant. The Tenant said the Landlord said that it was just procedure and he was not to worry about the Notices. As a result the Tenant's advocate said the late payments of rent were agreed to by the Landlord.

The Landlord said they did not make an agreement with the Tenant or the Occupant to pay the rent on a bi-monthly basis and they did not tell the Tenant or the Occupant to ignore the 10 Day Notices to End Tenancy for Unpaid Rent. As well the Landlord said the receipt for the partial payment of the March rent indicates the Landlord's intension to end the tenancy by issuing the receipt for occupancy only.

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.

And **Section 47(b)** says a landlord may end a tenancy if a tenant is repeatedly late with paying the rent.

The Tenant 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 has been repeatedly late with the rent payments as indicated by the number of Notices to End Tenancy for Unpaid Rent that the Landlord has issued to the Tenant and Occupant. I do not accept the Tenant's claims that the Landlord agreed to a bi monthly rent payment arrangement as there is no evidence to corroborate the testimony. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent and in this case the applicant has not met the burden of proof.

As well, I accept the Landlord's written evidence in the form of emails submitted from other tenants that the Occupant and the Tenant have significantly interfered with the quiet enjoyment of the other tenants in the rental complex. In addition I accept the Landlord's testimony that they felt threatened by the Occupants actions. Consequently I find that the Tenant has not established grounds to cancel the Landlord's Notice to End Tenancy and I dismiss the Tenant's application without leave to reapply.

As well I grant the Landlord an Order of Possession with an effective vacancy date of March 31, 2011 as written in the 1 Month Notice to End Tenancy for Cause dated February, 25, 2011.

Conclusion

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

An Order of Possession effective March 31, 2011, 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