



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes Tenant CNC, MNDC, OLC, FF
 Landlord OPB, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking an Order of Possession for a material breach of the tenancy agreement and to recover the filing fee for this proceeding.

The Tenants filed seeking an order to cancel the Notice to End Tenancy, monetary compensation for damage or loss under the Act, regulations or tenancy agreement, to have the Landlord comply with the Act and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenants were done by personal delivery on March 16, 2011, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by personal delivery on March 7, 2011, in accordance with section 89 of the Act.

The Landlord and Tenant both confirmed that they received the other's hearing packages.

During the Hearing the Dispute Resolution Officer informed the Tenant and the Landlord that the Hearing will focus on the applications for an Order of Possession and to contest the Notice to End Tenancy for a material breach of the tenancy agreement. The Tenant's applications for the Landlord to comply with the Act and monetary compensation for damage or loss are 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' applications for the Landlord to comply with the Act and monetary compensation for damage or loss are dismissed with leave to reapply.



Dispute Resolution Services

Page: 2

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Issues to be Decided

Landlord:

1. Is the Landlord entitled to end the tenancy?

Tenant:

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

Background and Evidence

This tenancy started on April 15, 2005 as a month to month tenancy. Rent is \$450.00 per month payable on the first day of the month for each month. The Tenant did not pay a security deposit or pet deposit.

The Landlord said they issued a 1 Month Notice to End Tenancy for repeatedly late rent payments by the Tenant. The Landlord continued to say the Tenant had \$1,740.00 of unpaid rent in July, 2010. The Landlord said he gave the Tenant a summary of the unpaid rent in July, 2010 on a hand written note and also a type written note. The Tenant said he only received the hand written note. The Landlord continued to say the Tenant paid the unpaid rent by the middle of July, 2010. Following the payment of the unpaid rent the Landlord told the Tenant the rent had to be on time from then on. The Landlord said the rent has been late 4 times since July, 2010: late rent was paid on October 2, 2010, November 2, 2010, January 3, 2011 and February 12, 2011. The Landlord provided receipts for the rent payments from May 2010 to February 2011. As well the Landlord submitted a copy of his calendar with the dates that the rent payments were received on it. The Landlord said they are frustrated with the tenancy and if their application is successful they want an Order of Possession as soon as possible. It was noted and acknowledged by the Landlord that the effective vacancy date on the Notice to End Tenancy dated March 1, 2011 has an effective vacancy date of April 1, 2011 which is incorrect and pursuant to section 53 of the Act (incorrect effective vacancy date change automatically) the effective vacancy date is changed to May 1, 2011.

The Tenants said they had a verbal agreement with the Landlord that they could do work on the property as payment of the rent and that work would be credit when the Landlords and Tenants discussed it. As a result the Tenants said they believed that the rent payment date was flexible prior to July, 2010. The Tenants said they pay their rent by cash and they have made all their rent payments on time except February, 2011 since July, 2010. The Tenants continued to say the Landlord has never given them a receipt and that the first time they saw the rent receipts was in the Landlord's hearing package. The Landlord said he put the receipts in the Tenant's mail box on the day the

rent payments were made. The Tenant continued to say that the receipts are not signed therefore the receipts are not valid.

The Tenants said it is not possible for them to move all their belongings off the property before July 1, 2011 as their children are in school and they have horses to relocate if they are evicted. The Landlord offered to give the Tenant's access to the property after May 1, 2011 if the eviction Notice is upheld. The Tenant said she did not want to leave any of her belongings on the property if they move to a new rental unit and she declined the Landlord's offer.

Analysis

Section 26 (1) of the Act 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 (1) (b) of the Act says a landlord may end a tenancy by giving notice to end tenancy if the tenant is repeatedly late paying the rent.

After reviewing the evidence and testimony I find that both the Tenant and the Landlord agree that prior to July, 2010 the Tenants had unpaid rent and were repeatedly late with the rent payment. I also accept the Tenant's testimony that there was an arrangement to exchange work on the property for rent payments and that the Landlord and the Tenant would discuss this arrangement when work was done and then adjust the rent accordingly. Consequently I accept the Tenant's testimony that the rent payments were on a flexible basis prior to July, 2010. I find, the rent payments were not repeatedly late prior to July, 2010 because of this arrangement between the Landlord and the Tenant.

During July, 2010 the Landlord and Tenant discussed the rent payments and I accept the Landlord's testimony and evidence that the Tenants were to pay the rent on the 1st day of each month from August, 2010 as in the tenancy agreement. The Landlord has submitted receipts which he said he gave the Tenants by placing them in the Tenant's mail box and he submitted a copy of his calendar with the rent payment dates marked on it as his evidence that the Tenants paid the rent late on 4 occasions after July, 2010. The Tenants disputed receiving the receipts and they said they paid the rent on time, but the Tenant's had no evidence to corroborate their testimony.

Policy guideline 38 of the Residential Tenancy Policy Guideline says three late payments are the minimum number to justify a notice under the provision of repeatedly late payments for a Notice to End Tenancy under Section 47 (1) (b) of the Act. A late payment is considered late the day after it is due, therefore in this situation the rent is due on the first day of the month therefore the rent is late on the 2nd day of the month. I accept the Landlord's testimony and evidence with regards to the receipts and the copy of the calendar to establish when rent payments were received. Consequently I find for the Landlord and grant the Landlords an Order of Possession for a breach of the tenancy agreement of repeatedly late rent payments by the Tenant.

The Tenant's paid the rent with cash so they cannot provide any evidence when the payments were made or if the rent payments were made; consequently the Tenant have not provided evidence or established reasonable grounds to prove that they made their rent payments on time from August, 2010 to March, 2011. As a result, I dismiss the Tenant application for an Order to cancel the Notice to End Tenancy dated March 1, 2011.

Consequently, I find pursuant to s. 55 of the Act that the Landlord is entitled to an Order of Possession with and effective vacancy date of May 1, 2011

As the Tenant has not been successful in this matter they will bear the \$50.00 filing fee and as the Landlord has been successful in this matter I order the Tenants to pay the Landlord \$50.00 for the recovery of the filing fee for this proceeding on April 1, 2011 with the April 1, 2011 rent payment.



Dispute Resolution Services

Page: 5

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Conclusion

The Tenants' application for monetary compensation for damage or loss and the landlord to comply with the Act is dismissed with leave to reapply.

The Tenants' application for an order to cancel the Notice to End Tenancy date March 1, 2011 is dismissed without leave to reapply.

An Order of Possession effective May 1, 2011 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