



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNR, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenant: as an application for cancellation of a 10 Day Notice to End Tenancy.

By the landlord: as a cross application for an Order of Possession and to recover the filing fee associated with his application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the Notice to End Tenancy?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of in a subsidized housing complex.

Pursuant to a written agreement, the month to month tenancy started on May 1st, 2008.

The rent, based on the tenant's income was \$178.00 per month.

Based on the tenancy agreement, the tenant agreed to provide a declaration of income, with supporting documentation, every year to allow the landlord to review and reassess the subsidized amount of rent.

L.S. testified that the crux of this dispute and what brought the landlord to issue a 10 Day Notice End Tenancy was that the tenant did not provide a full disclosure of her 2009 income tax package when requested. In her documentary evidence, the landlord provided a copy of four letters sent to the tenant in that regard dated January 1st, February 18th, March 21st, and April 19th, 2011. The last two letters contained specific details regarding the documentation that was required. The February 18th, 2011 letter included a guide that also specified that the tenant needed to provide a complete income tax return package or Option C Summary from Canada Revenue Agency. The landlord did not receive that information by the deadline set for the subsidy to terminate, and the tenant's rent for May was set at \$1465.00 as per the landlord's April 19th letter. The tenant did not pay the full rent and was served on May 5th, 2011 with a 10 Day Notice to End Tenancy.

The tenant testified that she did not understand what the complete income tax package entailed, and that she provided the landlord with the information she had at the time. She stated that she did not receive the landlord's April 19th letter until April 27th, and that she called the landlord for clarification. She said that she has since contacted Canada Revenue Agency, requested her 2009 income tax application package, and that she is waiting to receive it through regular mail. She said that when she spoke to the landlord bank deposits were discussed but not the information required. The tenant stated that she never received the landlord's March 21st letter, but acknowledged receipt of the other letters.

L.S. verified her records and clarified that she spoke with the tenant on April 28th, and that the required documentation was articulated to the tenant once again.

L.S. said that she made a similar request through H&R Block and that she received the documentation within 3 days.

Analysis

The landlord in this matter is exercising her right to end tenancy under Section 46(1) of the Act. That section states in part that a landlord may end a tenancy if rent is unpaid on any day after the day it is due by giving notice to end tenancy, and that a notice under this section must comply with section 52.

The parties' testimony confirms that the tenant did not pay the rent after increase, and as a result the landlord served the tenant with a 10 Day Notice to End Tenancy.

At issue in this matter is the rental amount, and whether the tenant paid rent in accordance with the Act and the tenancy agreement. The tenant provided the landlord with information that the landlord deemed insufficient. I find on the evidence that the tenant was informed since receipt, at the very least, of the landlord's February 18th, 2011 letter that she was required to provide a complete income tax return package. The tenant was aware of what was at stake; she was the party responsible to ensure that she provided the landlord with the required information on time to qualify for the subsidy. The tenant did not comply with the terms of the tenancy agreement in that respect and she lost her eligibility for subsidy. The landlord increased the rent and when the tenant did not pay the full amount, I find that the landlord had grounds to issue a Notice to End tenancy for unpaid rent.

Conclusion

The tenant's application is dismissed and the 10 Day Notice to end Tenancy is valid. I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Since the landlord was successful, pursuant to Section 67 of the Act I grant the landlord a monetary order of \$50.00 for recovery of the filing fee.

This Order may be registered in the Small Claims Court and enforced as an order of that Court.

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: June 09, 2011.

Residential Tenancy Branch