



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNDC, FF
MT, CNR, CNC, MNDC, ERP, RP

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding. The Tenant(s) applied for more time to cancel a Notice to End Tenancy as well as to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 8, 2011 and a One Month Notice to End Tenancy for Cause dated June 24, 2011. The Tenant(s) also applied for an Order that the Landlord make emergency repairs and general repairs and for compensation for damage or loss under the Act or tenancy agreement.

The Landlord's agent included on his application the names of two parties (J.M. and C.D.) as Tenants because both of them were named on the tenancy agreement. The copy of the tenancy agreement provided by the Landlord as evidence at the hearing however had only the signature of J.M and was unsigned by C.D. C.D. claimed that her signature appeared on a copy of the tenancy agreement in her possession but she did not provide a copy of it as evidence at the hearing. Given that there were some other discrepancies on the Landlord's copy of the tenancy agreement and the copy the Landlord submitted as evidence at the hearing, both Parties were directed by me to submit their respective copies of the tenancy agreement to me via fax ***immediately following the hearing.***

The Landlord's agents provided another copy of the tenancy agreement on which they rely however as of the date of this decision, C.D. had not submitted the copy of the tenancy agreement upon which she relied. Based on the evidence before me, I find that C.D. was not a signatory to the tenancy agreement. I also find that there is no evidence that C.D. was authorized to act as an agent for J.M. and to bring an application on his behalf as a Tenant (and in this regard I note that J.M. is *not* named as a Party on C.D.'s application).

However, C.D. also claimed that she was the tenant of the rental unit because the tenancy agreement had been terminated by J.M. C.D. claimed that J.M. moved out of the rental unit in early-May 2011 and the Landlord's property manager advised her that she had received an e-mail from J.M. around that time advising her that he was moving out. The Landlord's agents denied this and claimed that they had no knowledge J.M. was no longer residing in the rental unit. C.D. said that she then paid rent for June

2011 and a partial rent payment for July 2011. However, in her written submissions, C.D. gave contradictory evidence in that she claimed that she left the rental unit **on June 17, 2011** to stay with her son because “she could not longer stand the abuse [of J.M.]. Consequently, I conclude that as late as June 17, 2011, J.M. was still residing in the rental unit.

For the above-noted reasons, I find that there is insufficient evidence that the Tenant, J.M., moved out in May 2011 or gave the Landlord written notice that he was ending the tenancy. As a further consequence, I find that the Landlord was entitled to serve the Tenant, J.M., with its hearing package by registered mail to the rental unit address on August 3, 2011. The Tenant admitted during the hearing that she continues to have contact with J.M. and therefore I conclude that even if he did not receive the Landlord’s hearing package, he would have had notice of these proceedings. As a result I find pursuant to s. 71 of the Act that J.M. was sufficiently served with the Landlord’s Application and Notice of Hearing (the “hearing package”) for the purposes of the Act and the hearing proceeded in his absence.

For all of the above reasons, I find that J.M. is the only Tenant who is properly named as a party in these proceeding. Accordingly, I also find that C.D. has no standing as a Tenant to bring an application in this matter and her application is dismissed without leave to reapply. The style of cause is amended to remove C.D. as a party in these proceedings.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so how much?

Background and Evidence

This fixed term tenancy started on April 11, 2011 and expires on March 31, 2012. Rent is \$1,030.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$515.00 at the beginning of the tenancy. C.D. made a partial rent payment of \$515.00 on July 1, 2011 for July 2011 rent but no further rent payments have been made since that time.

The Landlord’s agent said that she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 8, 2011 for the unpaid rent for July 2011 but subsequently cancelled it. The Landlord’s agents admitted that they did not advise the Tenant that they had cancelled this Notice but they instead issued a new 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 21, 2011. The Landlord’s agents said they understood that since C.D. had already filed her application to cancel the former 10 Day Notice, that there would be no prejudice to her or the Tenant in re-issuing that Notice. C.D. said she received this Notice in her mail box on July 21, 2011.

The Landlord's agents also served the Tenant with a One Month Notice to End Tenancy for Cause dated June 24, 2011 by posting it to the rental unit door on June 24, 2011.

Analysis

Section 46(4) of the Act states that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

I find that C.D., (who is an adult person residing in the rental unit) received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 21, 2011 on July 21, 2011. Although C.D. applied to cancel this Notice, her application was dismissed as she has not standing to bring that application. In any event, I find that there was no merit to her application to cancel the 10 Day Notice as C.D. admitted at the hearing that rent for July 2011 has not been paid in full. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant as well as to recover unpaid rent of \$515.00 for July 2011 and unpaid rent for August 2011 of \$1,030.00. I also find that the Landlord is entitled to recover the \$50.00 filing fee for this proceeding.

As I have found that the Landlord is entitled to end the tenancy for unpaid rent, it is unnecessary for me to determine if there are also grounds for ending the tenancy pursuant to the One Month Notice to End Tenancy for Cause dated June 24, 2011.

Conclusion

C.D. application is dismissed in its entirety without leave to reapply due to a lack of standing. An Order of Possession to take effect two days after service of it on the Tenant and a Monetary Order in the amount of \$1,595.00 have been issued to the Landlord and a copy of them must be served on the Tenant. The Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) 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*.

Dated: August 23, 2011.

Residential Tenancy Branch