



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT, CNR, DRI, OPT, AAT, O, FF

Introduction

This hearing dealt with the Tenant's application to be allowed more time to file her application to cancel a *10 Day Notice to End Tenancy for Cause* (the Notice); to cancel the Notice; to dispute an additional rent increase; for an Order of Possession for the rental unit; for an Order allowing access to or from the rental unit for the Tenant or the Tenant's guests; and for recovery of the cost of the filing fee from the Landlords.

Both parties appeared at the hearing, gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was established that the Tenant served the Landlord's agent with the Notice of Hearing documents, by handing the documents to the agent on August 6, 2011.

Preliminary Matter

At the outset of the Hearing, it was determined that the Notice was posted on the Tenant's door on August 1, 2011. Section 47(4) of the *Residential Tenancy Act* (the "Act") provides that a tenant may dispute a Notice for cause by making an application for dispute resolution within 5 days of receiving the notice. The Tenant applied to be allowed more time to file her application, however I find that she filed within the time lines allowed by Section 47(4) of the Act. Therefore this portion of the Tenant's application is not required and is dismissed.

Issues to be Decided

Should the Notice issued August 1, 2011, be cancelled?

Is the Tenant entitled to an Order of Possession for the rental unit?

Did the Landlord impose a rent increase?

Should the Landlord be ordered to provide the Tenant with access to her mail?

Background and Evidence

The parties were in agreement to the following facts:

- On June 13, 2011, the Tenant made an application to rent a bachelor suite at the rental property for the monthly rent of \$550.00, due on the first day of each month. On June 13, 2011, the Tenant paid a security deposit in the amount of \$275.00, and \$375.00 towards rent for July on the bachelor suite.
- On July 1, 2011, the bachelor suite was not available for the Tenant, because the current tenant was overholding.
- The Landlord offered the Tenant a one bedroom suite at the same rent as the bachelor suite until such time as a bachelor suite became available. The Tenant accepted the Landlord's offer and moved into the one bedroom suite.
- The overholding tenant moved out of the bachelor suite on or about the third week of July, 2011.

The Landlord's agent testified that he advised the Tenant twice that the bachelor suite was available, but both times she refused to move because of the location of the bachelor suite. The Tenant testified that she did not wish to move into the bachelor suite because it did not comply with required fire safety regulations.

The Landlord's agent testified that he re-rented the bachelor suite effective August 1, 2011.

The Tenant submits that the Landlord increased her rent illegally because he is now expecting \$650.00 per month for the one bedroom suite she currently occupies. She submits that the bachelor suite was unsafe and that she is prepared to move into the next available bachelor suite that complies with safety regulations. The Tenant submits that she should be allowed to stay in the one bedroom suite, at \$550.00 per month, until such time as a suitable bachelor suite becomes available.

The Tenant paid \$550.00 rent on August 1, 2011. The Landlord's agent issued the Notice on August 1, 2011, for \$100.00 in unpaid rent for the one bedroom suite that was due on August 1, 2011.

The Tenant testified that she cannot receive her mail because the Landlord will not give her a key to the mail box for the one bedroom suite. The Landlord's agent stated that he is happy to provide her with her mail, but that he will not give her a key to the mail box for the one bedroom suite until such time as she signs a tenancy agreement for the one bedroom suite.

Analysis

In a situation where a tenant seeks to cancel a Notice to End Tenancy, the landlord is required to establish, on the balance of probabilities, that the tenancy should end for the reasons indicated on the Notice to End Tenancy. The Notice was issued and served on August 1, 2011, and therefore I find that it is not a valid notice. The earliest date the Landlord could have issued and served a Notice to End Tenancy for unpaid rent would have been August 2, 2011. Therefore, the Notice is cancelled. The Landlord is at liberty to issue another Notice to End Tenancy.

I find that the Tenant agreed to rent the bachelor suite (suite 109) on June 13, 2011, because:

- She made application to rent it;
- Her application was accepted by the Landlord; and
- She paid a security deposit on suite 109.

Based on the testimony of both parties, I find that the parties had an oral agreement that the Tenant could stay in the one bedroom suite (suite 302) and pay rent in the amount she would pay for suite 109, until such time as suite 109 or another bachelor suite became available (whichever should first occur). Suite 109 became available and the Tenant refused to move into it. The Tenant submitted that it was not safe, however the Tenant had viewed the suite on June 13, 2011, before she made her application to rent it. If the Tenant had concerns about the safety of the suite, after agreeing to rent it, her remedy would be to make application for dispute resolution. She did not.

I find that there is currently no tenancy agreement between the Landlord and the Tenant with respect to suite 302, and therefore I dismiss the Tenant's application for an Order of Possession for suite 302. I also dismiss the Tenant's application to cancel a rent increase, as I find there has been no rent increase imposed.

The Landlord has agreed to provide the Tenant with her mail. I decline to make an Order that the Landlord provide the Tenant with a key to the mail box for suite 302.

The Tenant has been partially successful in her application and is entitled to recover a portion of the filing fee from the Landlord. I hereby provide the Tenant with a Monetary Order in the amount of \$25.00 against the Landlord.

Conclusion

The Notice to End Tenancy issued August 1, 2011, is cancelled.

The remainder of the Tenant's application is dismissed without leave to reapply.

I hereby provide the Tenant a Monetary Order in the amount of **\$25.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: September 06, 2011.

Residential Tenancy Branch