



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR

Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a 10 Day Notice to End Tenancy and to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

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

Should the notice to end tenancy be set aside, and should the tenancy continue?

Are the tenants entitled to reduce rent, and if so for what amount?

Background and Evidence

The rental unit consists of a single detached home. Pursuant to a written agreement, the month to month tenancy started on July 1st, 2011. The rent is \$1800.00 payable on the first of each month and the tenants paid a security deposit of \$900.00.

The landlord testified the tenants have not paid full rent since the start of the tenancy, and made an adjustment to the amount of unpaid rent stated on the 10 Day Notice to End Tenancy from \$4900.00 to \$4700.00. Concerning the Notice to End Tenancy, there

is no dispute that it was served in person on November 1st, 2011; however the effective date ought to have been November 11th, 2011 and not September 24th, 2011.

Tenant N.B. testified that she has always paid her portion of the rent, and that it is her co-tenant who is not paying hers'. She disputed the amount claimed by the landlord but agreed that the amount owed remains substantial.

The landlord sympathized with N.B., however during the hearing she made an oral request for an Order of Possession.

Analysis

Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. Based on the parties' testimony I accept that the tenants have not paid rent on time and that the landlord had sufficient grounds to issue the 10 Day Notice to End Tenancy. Accordingly I find that the notice to end tenancy issued by the landlord is valid.

Section 55(1) of the *Residential Tenancy Act* states:

"If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) The landlord makes an oral request for an order of possession, and*
- (b) The director dismisses the tenant's application or upholds the landlord's notice."*

Since the tenant's application is dismissed, the landlord is entitled to an order of possession.

Conclusion

The tenants' application is dismissed.

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.

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: November 23, 2011.

Residential Tenancy Branch