



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, MNDC, OLC, RP, FF, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy; to cancel a notice to end tenancy; for a monetary order and an order to have the landlord complete repairs and to comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by the tenant and both landlords.

At the outset of the hearing, the landlords verbally requested an order of possession should the tenant be unsuccessful in her Application.

During the hearing the tenant stated she wanted to amend her Application to exclude the matter of a monetary order in the amount of \$500.00 for compensation for damage or loss. I accept the tenant's amendment.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to more time to dispute a Notice to End Tenancy; to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to an order to have the landlord make repairs; to an order to have the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 46, 66, 67, and 72 of the *Act*.

If the tenant is unsuccessful in the portion of her Application seeking to cancel the 10 Day Notice for Unpaid Rent it must be decided if the landlords are entitled to an order of possession, pursuant to Section 55 of the *Act*.

Background and Evidence

Both parties submitted copies of different tenancy agreements with the following details:

- The landlord provided a tenancy agreement signed by the parties on June 15, 2011 for a 24 month fixed term tenancy beginning on June 15, 2011 for a monthly rent of \$2,500.00 due on the 1st of each month with a security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00 paid on June 15, 2011; and
- The tenant provided a tenancy agreement signed by the parties on May 15, 2011 for for a 2 year fixed term tenancy beginning on June 24, 2011 for a monthly rent of \$2,500.00 due on the 24th of each month with a security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00 due on June 24, 2011.

While the terms of both tenancy agreements are relatively similar the parties confirmed the tenancy began on June 15, 2011 and that rent was normally due on the 1st of each month.

The landlords submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on December 2, 2011 with an effective date of December 31, 2011 due to unpaid rent in the amount of \$450.00.

The landlord served the Notice on December 2, 2011 by posting in the tenant's door. The tenant testified that she did not receive the notice until December 8, 2011 as she was out of town when it was served. She further testified that she attempted to file an Application for Dispute Resolution on December 9, 2011 but that when she arrived at the Residential Tenancy Branch (RTB) the office was closing and she was told to come back on Monday December 12, 2011.

The tenant testified that she fell sick after this and was not able to return to the RTB until December 19, 2011. The tenant provided no evidence to support the claim of illness that would have prevented her from filing her Application within the required time frame of 5 days, pursuant to Section 46 of the *Act*.

I advised the parties that based on this testimony and the lack of any supporting evidence I could not grant the tenant an extension to the deadline for submitting her Application to cancel the Notice. However, the landlord's agreed to an extension based on the circumstances as allowed under Section 66.

The landlord and tenant had a previous dispute hearing that resulted in the following orders:

"I order the landlords to take action to ensure that the vents affecting this rental unit are inspected and cleared of any obstruction or blockages within one month of the issuance of this decision so as to enable the vents to operate effectively. If the landlords do not comply with this order, I allow the tenant to reduce her monthly rent by \$200.00 per month until such time as this work has been done."

The tenant submits that she received a copy of the report/invoice from the landlord indicating the vents had been inspected and were in good working order. She goes on to say that she had followed up, through her father, with the inspectors and based on that consultation determined that the landlord had not had the inspection completed sufficiently to be compliant with the above order and reduced her subsequent two rental payments (December 2011 and January 2012).

Both parties testified that they consulted with Information officers at the RTB with their respective evidence regarding their follow up to the orders. The landlord states he was told the report/invoice was sufficient evidence that he had complied with the order. The tenant states she was told that based on her research and follow up the landlord had not fulfilled his obligations in relation to the order.

Upon review of the file, I note it is documented that the landlord contacted the RTB on November 1, 2011 but the notes only indicate he was told to provide the tenant with a copy of the report/invoice and a letter stating that based on the report they had complied with the order and they would expect full rent.

The landlords testified that they provided the tenant with a copy of the report/invoice and that when the tenant paid rent she deducted \$200.00. The landlords provided copies of email correspondence between the parties on December 2, 2011 in which the tenant confirms that she believes the landlord has not complied with the order and that is why she reduced the rent by \$200.00.

The landlords testified that the tenant also owed \$250.00 in rent from the start of the tenancy that she has never paid. The tenant asserts she had a verbal agreement with the landlords just after she moved in that she could buy paint for the unit and reduce her rent by the amount spent as long as she provided them with a receipt.

The landlords testified the tenant did ask for reduced rent to buy some paint but that they never agreed to it and in addition the tenant never provided a receipt. The tenant testified that she had submitted the receipt with her rental payment that was \$250.00 less than the rent due.

While this issue was raised in the previous hearing in relation to a 10 Day Notice to End Tenancy issued by the landlords on September 1, 2011, the Dispute Resolution Officer (DRO) cancelled that notice because it had no effective date but no findings were made by the DRO on the validity of the reasons for issuing the Notice.

The tenant asserts the DRO advised them in the previous hearing that the landlord should deal with the unpaid rent from the start of the tenancy when dealing with the security deposit at the end of the tenancy.

Analysis

Upon review of the previous decision between these parties, I find no reference to dealing with any issues related to unpaid rent at the end of the tenancy. Even if there was some reference to this issue implying the landlord could not take action against the tenant for unpaid rent until the end of the tenancy would be prejudicial against the landlord and contrary to Section 46 of the *Act* that allows a landlord to end a tenancy “on *any day after the date it is due*, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice” (emphasis added).

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

Based on the testimony provided by both parties I find the parties disagree that an agreement was even made. As such and in the absence of any documented evidence of such an agreement, I find the tenant has failed to provide sufficient evidence that she had authority or agreement from the landlord to withhold any amount of rent for paint.

For this reason, as there was at least some amount of outstanding rent on December 2, 2011, I find the tenant has failed to establish the 10 Day Notice to End Tenancy issued on December 2, 2011 should be cancelled.

As I have found the Notice to be valid in relation to the paint deduction, I make no findings on whether or not the \$200.00 rent reduction was justifiable and in accordance with the previous order.

Because the tenancy is ending, I find portions of the tenant's Application requesting the landlord comply with the *Act*, regulation or tenancy agreement and for an order to have the landlord make repairs, are no longer relevant and I dismiss those portions.

As the tenant has been unsuccessful in her Application I dismiss the portion of her Application seeking to recover the filing fee.

Conclusion

I find the landlords are entitled to an order of possession effective **two days after service on the tenant**, pursuant to Section 55 of the *Act*. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: January 06, 2012.

Residential Tenancy Branch