



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNQ, OPQ, OPR, MNR, FF

Introduction

This hearing was scheduled to deal with cross applications. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The tenant had applied to cancel a *10 Day Notice to End Tenancy for Unpaid Rent* and a *2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit*. The landlord confirmed receiving the tenant's application.

The landlord had applied for Orders of Possession based upon the above Notices to End Tenancy and a Monetary Order for unpaid rent. The tenant stated she had not received a copy of the landlord's application or evidence. The landlord testified that he asked another person to serve the tenant as the landlord had been ill recently. The landlord was of the belief the tenant was served by registered mail but could not produce a registered mail receipt or tracking number. Nor did the landlord produce the person that was supposed to have served the tenant. Accordingly, I found the landlord had not provided sufficient evidence that the tenant had been served with the landlord's application.

I informed the parties that I would dismiss the landlord's application with leave to reapply and proceed with the tenant's application. The landlord verbally requested he be provided with an Order of Possession should the Notices to End Tenancy be upheld.

The tenant stated that she no longer wished to dispute the 2 Month Notice to End Tenancy and would vacate on the effective date of that Notice. Therefore, the remainder of this decision pertains to the 10 Day Notice to End Tenancy for Unpaid Rent and whether the landlord is entitled to an Order of Possession.

Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?

Background and Evidence

I was provided the following undisputed evidence:

- The rental unit is a subsidized rental unit and the landlord is a non-profit housing society.
- The tenant is required to provide documentation to declare her income and assets at least once every 12 months for a BC Housing verification audit.
- The tenancy commenced October 15, 2010.
- The tenancy agreement indicates the monthly rent is \$388.00 payable on the 1st day of every month.
- On January 2, 2012 the landlord issued a 2 Month Notice to End Tenancy because the tenant does not qualify for subsidized rental unit with a stated effective date of March 5, 2012 ("the 2 Month Notice").
- On January 13, 2012 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent indicating \$766.00 in rent was outstanding as of January 1, 2012 and a stated effective date of January 30, 2012 ("the 10 Day Notice").

The landlord testified that the market rent for the unit is \$766.00 per month and the tenant lost her subsidized status starting December 2011. The tenant paid \$389.00 for December 2011 and \$390.00 for January 2012 leaving an outstanding balance of rent of \$388.00 for each month.

The tenant stated in her written submission that she has paid \$388.00 every month and that her income had not changed since she has lived in the subsidized rental.

Analysis

With respect to the 10 Day Notice I cancel the Notice as I am not satisfied the tenant is required to pay rent of \$766.00 every month, as submitted by the landlord. Rather, the written tenancy agreement stipulates the monthly rent is \$388.00 and the tenant must pay this amount, or the Tenant Rent Contribution, whichever is less. Based upon the submissions of both parties, the tenant has paid at least \$388.00 for December 2011 and January 2012. Thus, I find she has met her obligations to pay the required rent under the tenancy agreement and there is no outstanding rent for December or

January. Since I have cancelled the 10 Day Notice invalid I do not provide an Order of Possession to the landlord based upon this Notice.

With respect to the 2 Month Notice I find that it remains enforceable as the tenant withdrew her request to cancel it. Pursuant to section 55 of the Act, I grant the landlord's oral request for an Order of Possession based upon the 2 Month Notice.

Since the tenant is required to pay rent on the 1st day of every month the effective must read the last day of the second month after notice was given. Therefore, the effective date is automatically changed to read March 31, 2012 in accordance with sections 49 and 53 of the Act.

With the landlord's copy of this decision I provide the landlord with an Order of Possession effective at 1:00 p.m. on March 31, 2012.

As information for the parties, the tenant is entitled to compensation equivalent to one month's rent for receiving a 2 Month Notice, as provided under section 51 of the Act. The tenant is also entitled to end the tenancy earlier than March 31, 2012 in accordance with the provisions of section 50 of the Act. Both parties are encouraged to contact the Residential Tenancy Branch if they have any questions about these sections of the Act.

Conclusion

The 10 Day Notice has been cancelled and there is no outstanding rent for December 2011 or January 2012. The 2 Month Notice remains enforceable and the landlord has been provided an Order of Possession effective at 1:00 p.m. on March 31, 2012.

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: February 02, 2012.

Residential Tenancy Branch