



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MT, CNR, ERP, PSF, RR, O,

Introduction

This Hearing was scheduled to hear the Tenants' application to be allowed more time to file an application to cancel a *10 Day Notice to End Tenancy for Unpaid Rent* (the "Notice"); to cancel the Notice; for an Order that the Landlord make emergency repairs for health or safety reasons; for an Order that the Landlord provide services or facilities required by law; and for an Order allowing the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties gave affirmed testimony at the Hearing.

Preliminary Matter

The Tenant has applied to be allowed more time to file her application to cancel the Notice. The Landlord testified that he served the Notice upon the Tenant on January 7, 2012. The Tenant filed her Application to dispute the Notice on January 10, 2012. Therefore I find that the Tenant filed her Application within the 5 day time limit required under Section 46 of the Act and that her application to be allowed more time is not necessary. This part of her application is dismissed.

The Residential Tenancy Rules of Procedure, Rule 2.3, states that for disputes to be combined on an application they must be related. I find that the Tenant's requests for Orders are not sufficiently related to the main issue, which is to cancel the Notice. For these reasons, I dismissed the Tenant's application for those Orders with leave to reapply.

Issue(s) to be Decided

- Should the Notice issued January 7, 2012, be cancelled?

Background and Evidence

The Landlord testified that the Tenant has not paid full rent for more than a year.

The Tenant stated that she knows she owes rent but is not sure how much. She stated that she stopped paying rent last year because of repairs that are required and are not being done.

The Landlord asked for an Order of Possession.

Analysis

Section 26 of the Act provides that a tenant **must** pay rent when it is due unless the tenant has a right under the Act to deduct all or a portion of the rent. In this case, the Tenant did not have a right under the Act to withhold the rent. There is no outstanding Order of a dispute resolution officer allowing her to withhold all or a portion of her rent. The Tenant has no right under Section 33(7) of the Act to deduct any amount from rent.

The Tenant agreed that she owes rent to the Landlord. Therefore, I dismissed the Tenant's application to cancel the Notice.

I explained to the Tenant that she had not applied for compensation for damage or loss under the Act, regulation or tenancy agreement and that she remains at liberty to apply for such compensation if she so desires.

Section 55(1) of the Act states:

- 55** (1) 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.

I am satisfied that the Tenant received the Notice on January 7, 2012. I find that the effective date of the end of the tenancy was January 17, 2012 and that therefore the Landlord is entitled to an Order of Possession **effective 2 days after service of the Order upon the Tenant.**

Conclusion

The Tenants' application to cancel the *10 Day Notice to End Tenancy for Unpaid Rent* issued January 7, 2012, is **dismissed**.

The Tenant remains at liberty to apply for compensation for damage or loss under the Act, regulation or tenancy agreement, if she so desires.

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order 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: February 01, 2012.

Residential Tenancy Branch