



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNDC, RP, FF

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; requesting compensation for damage or loss; an order the landlord make repairs tot eh unit and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The landord confirmed receipt of the tenant's amended application on March 18, 2012.

The tenant indicated several matters of dispute on her application and confirmed that the main issue to deal with during this proceeding was the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt deal with the tenant's request to set aside or cancel the Notice to End Tenancy for Cause and dismissed the balance of the tenant's claim with liberty to re-apply.

Multiple evidence submissions were made by the parties; however the evidence was not reviewed in full. The parties referenced several specific emails contained in the evidence submissions that I have considered and agreed that they each also had copies of the tenancy agreements, a proof of service document and the 10 Day Notice ending tenancy issued on March 9, 2012. Only these documents were considered during the hearing.

The tenant indicated that her surname has changed since she signed the tenancy agreement.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on March 9, 2012, be cancelled?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced in November 2011, rent is \$750.00 due on the first day of each month. The parties agreed that they have signed 2 tenancy agreements and could not agree on the term of the current tenancy.

The tenant confirmed receipt of a Proof of Service document on March 7, 2012, given to her by the landlord's mother. A copy of this document was supplied as evidence; it set out how future rent payments should be made.

The landlord and the tenant agree that a 10 Day Notice to End Tenancy for Unpaid Rent was issued on March 9, 2012, and received by the tenant on that date.

The parties also agreed to the following facts:

- At the start of the tenancy the landlord was given 6 post-dated rent cheques;
- That the January 2012, rent cheque was deposited to the landlord's bank account on December 28, 2011;
- That the January 2012 rent payment was returned as NSF;
- That the landlord notified the tenant in mid-February 2012, that the rent payment for January had not been made; and
- That the tenant did not pay the January rent owed within 5 days of receipt of the 10 Day Notice ending tenancy.

The tenant submitted that the landlord deposited the January, 2012, cheque too early, which resulted in it being returned NSF. The tenant mailed the landlord a replacement cheque, which the landlord claims she did not receive. The tenant believes that the landlord wishes to evict her and that this is why the landlord has denied receiving the January, 2012, replacement cheque.

The landlord stated that the Proof of service documents given to the tenant by the landlord's mother on March 7, 2012, indicated that the rent payments should now be made by money order, bank draft, certified cheque or cash.

The tenant did not think to pay the landlord's mother the January rent and did not wish to send another cheque in the mail until the landlord would confirm she had not received the cheque that had been sent to her via regular post some time after mid-February.

The landlord confirmed that February and March, 2012, rent was paid via post-dated cheques.

During the hearing the landlord requested an Order of possession.

Analysis

The tenant confirmed receipt of the 10 Day Notice Ending Tenancy for Unpaid Rent issued on March 9, 2012. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$750.00 within five days after the tenant received the Notice.

The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice; March 20, 2012, unless the tenant paid the rent or filed an Application for Dispute Resolution within five days.

During the hearing the tenant has confirmed she has not paid the outstanding January, 2012, rent owed. The tenant could describe no efforts made after she received the notice, to ensure that the rent was paid.

I have rejected the tenant's submission that she could not pay the rent until she knew if the landlord had received the cheque mailed to the landlord. It is clear that when the landlord issued the Notice ending tenancy she was indicating that in fact she did not have the rent payment and that the tenant was required to give the landlord that payment within 5 days.

Therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended.

Section 55(1) of the Act provides:

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 have dismissed the tenant's Application to cancel the Notice; the landlord requested an Order of possession. Therefore, I find that the landlord is entitled to an order of possession effective 2 days after service to the tenant.

Conclusion

The tenant's application is dismissed; the Notice ending tenancy issued on March 9, 2012, is of full force and effect.

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with 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: March 30, 2012.

Residential Tenancy Branch