



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, 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 for Cause; for a monetary order for the cost of emergency repairs; 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.

The submission of late evidence is a clear violation of the Rules of Procedure. After hearing the parties' testimony, I find that it would be unduly prejudiced to accept the landlord's late evidence and therefore it is not considered in my decision. I did however consider the landlord's testimony at the hearing.

Issue(s) to be Decided

Should the notice to end tenancy be set aside, and should the tenancy continue?
Is the tenant entitled to reduced rent?

Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the month to month tenancy started on March 1, 2012. The subsidized portion of rent payable by the tenant is \$395.00 per month and the tenant has not yet paid a security deposit of \$281.50.

The landlord testified that he only received the subsidized portion of rent from BC Housing. He stated that the tenant did not pay her portion, and that she did not pay the security deposit. The landlord served the tenant with a 10 Day Notice to End Tenancy dated March 10, 2012, with an effective date of March 21, 2012 for unpaid rent and unpaid security deposit totalling \$651.50, which remains unpaid to date.

The tenant testified that she has the money now to pay the landlord. She stated that she has no heat, lives on the ground floor, is not safe, and that the agreement is a two way street. She believes that the landlord ought to give her another chance.

Analysis

In the details of her application, the tenant stated that she took it upon herself to hold rent until repairs were finished. Although the tenant did not address repairs at the hearing, she did state that she did not pay the rent.

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*. A breach of a material term of a tenancy agreement does not entitle the tenant to withhold rent. A remedy for the tenant would be to seek assistance through dispute resolution to resolve the problem, or to seek orders for compliance if the landlord fails to attend to the issue. Alternatively, Section 45 of the *Act* provides for the tenant to give the landlord written notice to end the tenancy if the landlord does not cooperate.

Accordingly the tenant was obliged to pay the full amount of rent. The landlord had grounds to issue the 10 Day Notice to End Tenancy and therefore the notice is valid.

The tenant did not pay the amount due within 5 days as required in the notice and as such the landlord is entitled to an order of possession.

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.”*

The landlord made an oral request for an order of possession. Since the tenant’s application is dismissed, the landlord is entitled to an order of possession. Accordingly, it is not necessary that I consider the aspect of the tenant’s application concerning the notice to end tenancy for cause.

The tenant did not speak concerning her request for reduced rent and therefore I dismiss this aspect of her application.

Conclusion

The tenant’s application is dismissed without leave to reapply.

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: March 29, 2012.

Residential Tenancy Branch