



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, MNDC, LRE

Introduction

This was the hearing of an application by the tenant to cancel a one month Notice to End Tenancy for cause, a 10 day Notice to End Tenancy for unpaid rent and for other relief including a monetary award. The hearing was conducted by conference call. The tenant and the landlord's agent called in and participated in the hearing. At the hearing the tenant requested a postponement for health reasons. The landlord was not prepared to adjourn the hearing if it would result in the continuance of the tenancy. The tenant did stay and continued to participate in the hearing until it was concluded.

Issue(s) to be Decided

- Should the Notices to End Tenancy be cancelled?
- Is the tenant entitled to a monetary award and if so, in what amount?
- Are there grounds to restrict the landlord's access to the rental unit?

Background and Evidence

The rental unit is a suite in the landlord's house in New Westminster. The tenancy began on February 1, 2012, but the tenant did not move in until February 3, 2012. The monthly rent is \$800.00 payable on the first of each month. The landlord's agent testified that the tenant has not paid the full rent since the tenancy began. She said that there is \$200.00 in rental arrears as of May. The landlord submitted as evidence a copy letter from the tenant dated March 2, 2012. In the letter the tenant said that "the amount on this months cheque is \$100.00 short as well as the next months. May and so on will be \$750.00. Due all the complications it was decided by disability that this was adequate" (reproduced as written). The tenant claimed that she should be reimbursed for cleaning and painting of the rental unit. The tenant also claimed that the rental unit was unsafe and the landlord did not provide a proper lock. The landlord's agent disputed her testimony. She said that the tenant gave a key to the rental unit to her husband and then the tenant insisted that the locks be changed because he had a key to the rental unit.

The landlord served the tenant with a one month Notice to End Tenancy for cause on April 29, 2012. The notice was posted to the door of the rental unit. The landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent on May 5, 2012. The Notice was handed to an adult male at the rental unit. the landlord's agent testified that the tenant sent a text message wherein she acknowledged receiving the Notice to End Tenancy.

In her application for dispute resolution the tenant claimed payment of the sum of \$480.00. She did not provide any documents to support her application. At the hearing the tenant said she had a great deal of documents to support her application, but she was unable to deliver it to the Residential Tenancy Office due to ill health.

The landlord's agent requested that I issue an order for possession in the event that the Notice to End Tenancy for unpaid rent was upheld. The landlord's agent presented evidence as to cause for ending the tenancy. She testified that the tenant has caused a constant stream of problems since the tenancy began.

Analysis and Conclusion

The *Residential Tenancy Act* provides by section 26 (1) that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. The *Residential Tenancy Act* permits a tenant to deduct an amount from a rent payment without first obtaining an order only when the tenant has paid for emergency repairs as defined by the Act and the landlord has not reimbursed the tenant after the tenant has provided written particulars to the landlord. The only other exception to the requirement to pay rent is contained in section 43(5) of the Act; it provides that: If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The tenant has not performed any emergency repairs and there has been no rent increase since commencement of the tenancy. The tenant claimed be entitled be reimbursed for painting and cleaning, but I find no basis for her claim for a monetary order and it is dismissed without leave to reapply; even if she was entitled to some reimbursement, that would not be an acceptable ground for withholding rent payments. The tenant has not established that she has any basis for withholding rent payments and I find that she has not provided evidence of any ground that would excuse her from his obligation to pay rent in full each month. The tenant's application to cancel the 10

day Notice to End Tenancy for unpaid rent is therefore dismissed without leave to reapply.

Section 55 of the *Residential Tenancy Act* provides as follows:

- 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 dispute the landlord's Notice to End Tenancy for unpaid rent. The landlord made an oral request for an order of possession at the hearing. Pursuant to section 55 I grant the landlord an order for possession effective two days after service upon the tenant. This order may be registered in the Supreme Court and enforced as an order of that court. In light of my findings with respect to the 10 day Notice to End Tenancy, I need not consider whether the landlord has sufficient grounds to end the tenancy for cause.

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*.

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Dated: May 31, 2012.

Residential Tenancy Branch