



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OC, PSF, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and orders that the landlord comply with the Act and provide services or facilities. Both parties participated in the conference call hearing.

At the hearing, the tenant advised that she intended to vacate the rental unit, although the parties could not agree on the date she would do so. As the tenancy will not be continuing, I find it unnecessary to address the claim for orders that the landlord comply with the Act and provide services or facilities and I therefore dismiss those claims.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that the tenant was obligated to pay \$850.00 in rent in advance on the first day of each month. They further agreed that the tenant did not pay rent in May and that on May 2, she was served with a 10 day notice to end tenancy (the "Notice").

The tenant testified that she did not pay her rent because the tenant in the upstairs unit, with whom she shared a mailbox, had taken cheques from the mail which the tenant had anticipated using to pay her rent. The upstairs tenant denied having taken the tenant's cheques and testified that she believed her own mail had been taken at some point.

Analysis

The tenant is required under section 26 of the Act to pay rent when it is due. There is no provision under the Act that excuses the tenant from doing so when she is faced with a financial crisis resulting from theft or any other unexpected occurrence. The tenant did not allege that the landlord took the cheques in question and I find that there is no

legal basis under which the tenant can be excused from having paid her rent on time. For this reason, I dismiss the tenant's claim.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The tenant's claim is dismissed and the landlord is granted an order of possession.

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: May 28, 2012

Residential Tenancy Branch