

Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, ERP, RP, LAT, LRE, RR, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy, for compensation for loss or damage under the Act, regulations or the tenancy agreement, for emergency repairs and other repairs to the unit, site or property, to change the locks on the rental unit, set conditions on the landlord's right of entry to the unit, for a rent reduction and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on June 8, 2012. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

At the start of the Hearing the Dispute Resolution Officer informed the parties that the application is to contest a Notice to End Tenancy and the monetary claims as well as the claim for repairs, to change the locks, to set conditions on the Landlord's right of entry to the unit and for a rent reduction by the Tenant are a separate and unrelated disputes to this application. In section 2.3 of the Residential Tenancy Branch Rules of Procedure (Dismissing unrelated disputes in a single application) a Dispute Resolution Officer may dismiss unrelated disputes within one application. The Tenant's monetary claims and other claims are dismissed with leave to reapply.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Landlord's Notice to End the Tenancy?

Background and Evidence

The Landlord said this tenancy started on June 1, 2011 and the Tenant said the tenancy started on June 15, 2011. There is no written tenancy agreement. Rent is \$1,000.00 per month payable in advance of the 1st day of each month. There is no security deposit involved in this tenancy.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated May 30, 2012. The Notice has an effective vacancy date of June 1, 2012. The Landlord said he served the Notice on May 30, 2012 at 8:50 p.m. by personal

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delivery. The reasons given for issuing the Notice are repeatedly late with rent payments and because the Tenant did not comply with an order given by the municipality to clean up the property. The Landlord provided a written list of the rent payment dates for 2011 and 2012 to show that the Tenant has been late in paying the rent from September 2011 to June, 2012. The Landlord included in evidence the bank statement for the rental property to show when the payments were made and how much the payments were. The Landlord said the Tenant fell behind \$200.00 in September and was approximately \$200.00 in arrears with the rent from September to June, 2012. The Landlord said he phoned the Tenant on a number of occasions between September and June to tell the Tenant the rent was late and unpaid.

The Landlord continued to say the second reason for the Notice to End Tenancy is that the Regional district has issued a letter requiring the property to be cleaned up and for any RVs and RV occupants to be removed. The Landlord said the Tenant has not done this and the costs of cleaning the property up are going to be charged to him through the property taxes.

The Tenant said he has paid all his rent now and he was not aware that he had unpaid rent from September, 2011 to June, 2012 until the Landlord gave him the Notice to End Tenancy on May 30, 2012. The Tenant continued to say that he manages his affairs well and he would have paid the arrears if he knew about them. The Landlord said he spoke with the Tenant many times because the rent payments pay the mortgage payments and the mortgage is paid on the first of each month. The Landlord said when the mortgage payments are not made he had to call the Tenant about the rent payments. The Tenant continued to say he was sorry to the Landlord and he did not want to cause this situation, but it was a clerical error on his part. The Tenant did agree that he has been late on his rent payments from September, 2011 to June 2012, but he said he has always paid the full amount of rent even if it was late.

The Tenant continued to say that he has removed his RV from the property and is in the process of having the other RV removed as well as much of the clutter on the property. The Tenant said removing the clutter and garbage from the property is problematic because much of the stuff on the property is owned by the Landlord and he does not think he can just remove it.

The Tenant said in closing that he would like to continue the tenancy if it is possible.

The Landlord said the tenancy has been difficult and he wants to end it at the end of the month June 30, 2012.

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Analysis

Residential Tenancy Policy Guideline 38 says that a landlord may end a tenancy where the tenant is repeatedly late paying the rent. Three late payments are the minimum number sufficient to justify a notice under these provisions and a landlord must act in a timely manner after the most recent late rent payment.

Both the Landlord and the Tenant agree that the Tenant has been late with many rent payments. The Tenant said he was not aware he was late with the rent payments because he paid the total rent amount each month and did not know that part of the payment went to the previous month's rent making him late each month. The Landlord said the Tenant was aware that the rent was late because they talked about it on the phone on a number of occasions.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. The Landlord has submitted a list of rent payments and payment dates to support his position. The Tenant has no corroborating evidence to prove that he was unaware of the rent arrears. I accept the Landlord's evidence and testimony; I find the Tenant has not established grounds to be awarded an order to cancel the Notice to End Tenancy dated May 30, 2012. Consequently I dismiss the Tenant's application to cancel the Notice to End Tenancy and the 1 Month Notice to End Tenancy for Cause stands in full effect. It should be noted that the effective vacancy date on the Notice is for June 1, 2012 which is incorrect. Pursuant to section 53 of the Act the effective vacancy date is automatically changed to from June 1, 2012 to June 30, 2012, one full month after the Notice to End Tenancy was dated and served.

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Conclusion

I dismiss the Tenant's application to cancel the Notice to End Tenancy for Cause dated May 30, 2012 without leave to reapply.

The Tenant's monetary claim and claims for emergency repairs , general repairs , changing the locks on the unit, setting conditions on the landlord's entry to the unit and for a rent reduction are dismissed with leave to reapply.

As the Tenant has not been successful in this matter I order the Tenant to bear the cost of \$50.00 for the filing fee which he has already paid.

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*.

Dispute Resolution Officer