



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, MNDC, RP, OLC, LRE and FF

Introduction

This hearing was convened on the tenants' application of July 30, 2012 to have set aside a 10-day Notice to End Tenancy for unpaid rent and a one-month Notice to End Tenancy for cause, both served on July 24, 2012.

The tenants also sought a Monetary Order for loss of quiet enjoyment, an order for landlord compliance with the rental agreement and legislation, an order for repairs, an order restricting landlord access to the rental unit, and recovery of the filing fee for this proceeding.

Rule of Procedure 2.3 provides that:

If, in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.

Given the number of claims submitted by the tenants on the present application and as the hearing progressed, it became apparent it would be necessary to limit the present hearing to the Notices to End Tenancy as the paramount issues in dispute.

If the application succeeds and the tenancy continues, the tenants have leave to reapply for all other matters. If the application does not succeed and the tenancy is to end, they all matters other than the claim for loss of quiet enjoyment will be moot and the tenants will have leave to reapply on that issue alone.

Issue(s) to be Decided

Should the Notices to End Tenancy for cause and for unpaid rent be set aside or upheld?

Background and Evidence

While the male tenant previously lived in the basement suite of the rental building, the female tenant joined the tenancy approximately 1.5 years ago in a new tenancy on the main floor of the rental unit. The landlord states that rent is \$1,508.93 per month and the tenants state that it is \$1,500 per month.

In support of his figure, the landlord submitted into evidence a copy of a Notice of Rent Increase dated June 29, 2011 which increased the rent from \$1,475 per month to \$1,508.93, the precise amount permitted by the 2.3 percent allowable increase at the time. The landlord submitted a written statement from another party attesting that he had served the notice to the male tenant on June 29, 2012. The landlord stated that he witnessed the service from his car, but noted that he avoided personal contact with the male tenant due to his aggressive nature.

The landlord gave evidence that the tenants had paid only \$1,500 of the rent since the notice came into effect on October 1, 2011, leading to the accumulated shortfall of \$89.30 cited in the Notice to End Tenancy for unpaid rent of July 24, 2012.

In the interim, the landlord stated that the tenants have not paid any of the rent due on August 1, 2012. The tenants said they paid the August rent by registered mail sent on July 30, 2012. Canada Post tracking services shows that a package was received by the landlord on August 1, 2012, but the landlord noted that it contained only the Notice of Hearing materials arising from the tenants' application for dispute resolution.

While a number of causes were cited on the Notice to End Tenancy for cause, they include that landlord's claim that the tenants were repeatedly late paying rent. The landlord stated that the tenants' rent was routinely late and he submitted a list of 10 occasions on which the rent had been short leaving an outstanding total rent shortfall of \$2,192.50.

Analysis

Section 47 of the *Act* empowers a landlord to issue a one-month Notice to End Tenancy for cause. While the landlord has applied under a number of subsections, I find that 47(1)(b) – repeated late payment of rent – is proven on the balance of probabilities .

As to the Notice to End Tenancy for unpaid rent, section 26 of the *Act* provides that tenants must pay rent when it is due. Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, the tenants have made application, but I find that they did not pay the rent within five days of receiving the notice.

I find the landlord's evidence with respect to proper notice of the rent increase to be the more credible and I find that the tenants owed and did not pay the \$89.30 arrears due on July 1, 2012 as claimed in the Notice to End Tenancy for unpaid rent.

Therefore, I declined to set aside either Notice to End Tenancy.

On hearing that determination, the landlord requested and I find he is entitled to an Order of Possession under section 55(1) of the *Act* which compels the issuance of such order when a tenant's application to set such notice aside is dismissed and the Notice to End Tenancy is upheld.

Under the Notice to End Tenancy for unpaid rent, I find that the landlord is entitled to the Order of Possession to take effect two days from service of it on the tenants.

As the end of the tenancy is imminent, I find that all other claims submitted by the tenants are moot, save for their claim for loss of quiet enjoyment which is dismissed with leave to reapply.

Conclusion

Both Notices to End Tenancy of July 24, 2012 are upheld.

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenants.

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: August 27, 2012.

Residential Tenancy Branch