



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearings were conducted via teleconference and were both attended by the tenant and the first hearing was attended by one agent for the landlord and the second hearing by two different agents for the landlord.

During the first hearing the landlord's agent had provided testimony on how rent is determined for the rental unit the tenant occupies and as a result, I sought additional clarification of this process which required an adjournment. I ordered the landlord to provide as much evidence on this process and the tenant's file as possible to me and to the tenant and that the tenant could provide any additional response that she wanted.

Both parties provided additional evidence, however the landlord's agents testified they had not received the tenant's evidence. Tracking information on the registered mail the tenant served on the landlord shows the evidence was accepted by the landlord on August 16, 2012.

The tenant's evidence consisted primarily of a summary of the rent amounts she has paid over the course of the tenancy and as a result was significantly also contained in the landlord's evidence. The hearing proceeded with agreement by both parties.

During the hearing, the landlords verbally requested an order of possession should the tenant be unsuccessful in her Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled cancel a 10 Day Notice to End Tenancy and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

If the tenant is unsuccessful in her Application seeking to cancel the 10 Day Notice for Unpaid Rent it must be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on June 30, 2000 for a month to month tenancy with a rent that is calculated as a percentage of the tenant's income, known as "rent geared to income" with a security deposit of \$350.00 paid.

While the tenancy agreement shows the rent as \$919.00 the landlord submits this is simply a reference amount that can be used to determine any subsidy the tenant may be entitled to as a result of her income. The landlord also submits that they are one of the organizations specifically exempted from the sections of the *Act* and regulation that deal with rent increases under Section 2 of the Residential Tenancy Regulations.

The landlord submits the tenant had been informed her rent amount on July 11, 2011 with an effective date of August 1, 2011 in the amount of \$944.00 and that the tenant had paid this amount until July 1, 2012 when she provided the landlord with a cheque for \$862.00 for rent for July 2012.

The landlord submits the cheque was returned to the tenant and asked the tenant to provide a cheque in the correct amount of rent. When she failed to provide the corrected cheque the landlord issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent on July 5, 2012 with an effective date of July 15, 2012 citing the tenant failed to pay rent in the amount of \$944.00 due on July 1, 2012.

The tenant testified that because she had not received her notice for her new rental amount she calculated what it should be on her own and provided the landlord for what she had determined was her rent and provided the landlord with a cheque for that amount.

The landlord testified that tenants who receive notices for their annual calculation of rent can seek clarification and reassessment if they believe the calculations were wrong, however the month of June 2012 was still included in the notice from the previous year and there had been no change in the amount until the landlord provided her notice on June 27, 2012 that effective August 1, 2012 her rent would be reduced to \$935.00.

Analysis

Section 2 of the Residential Tenancy Regulation states: "Rental units operated by the following are exempt from the requirements of section 34(2), 41, 42, and 43 of the *Act* [assignment and subletting and rent increases] if the rent of the units is related to the tenant's income:

- a) The British Columbia Housing Management Commission;
- b) The Canada Mortgage and Housing Corporation;
- c) The City of Vancouver;
- d) The City of Vancouver Public Housing Corporation;
- e) Metro Vancouver Housing Corporation;

- f) The Capital Region Housing Corporation;
- g) Any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of the residential property with the following:
 - a. The government of British Columbia;
 - b. The British Columbia Housing Management Commission;
 - c. The Canada Mortgage and Housing Corporation

As the named landlord in this tenancy is also specifically named under this exemption, I find the landlord is entitled to set rent that is related to the tenant's income in accordance with their own assessments and any rent increases or reductions are not subject to adjudication by the Residential Tenancy Branch.

However, once the rent amount is established Section 26 of the *Act* applies. Section 26 states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations, or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

The tenant has provided no evidence to establish that she has a right under the *Act* to deduct any amount of the rent and as such, even if the landlord had accepted the tenant's reduced amount of rent payment the tenant would have still failed to fulfill her obligations under Section 26.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

While I accept the tenant filed her Application within the required timeframes, she has provided no evidence that she had authority to deduct any amount of rent from that payable to the landlord and as such I find the landlord is entitled to end the tenancy and I dismiss the tenant's Application.

As such and in accordance with the landlord's verbal request for an order of possession, I find the landlord is entitled to such an order pursuant to Section 55 of the *Act*. I note, however, during the hearing the landlord testified that if the tenant paid the amount of rent outstanding that they would not enforce the order of possession until August 31, 2012.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: August 23, 2012.

Residential Tenancy Branch