



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, RR, OLC

Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2012 and a One Month Notice to End Tenancy for Cause dated August 13, 2012, for a rent reduction and for an Order that the Landlord comply with the Act or tenancy agreement.

RTB Rule of Procedure 2.3 states 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.”* I find that the Tenant’s applications for a rent reduction and for an Order that the Landlord comply with the Act or tenancy agreement are not related to her applications to cancel a 10 Day Notice and a One Month Notice and they are dismissed on the terms set out in the Conclusions section of this Decision.

At the beginning of the hearing, the Tenant admitted that she had not served the Landlord with her documentary evidence package and as the Landlord has no opportunity to respond to that evidence, it is excluded pursuant to RTB Rule of Procedure 11.5(b).

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This fixed term tenancy started on November 1, 2011 and expires on November 1, 2012. The tenancy agreement sets out the names of the Tenant and a co-tenant, C.S., who moved out in April 2012. The tenancy agreement states that rent is \$600.00 per month however both Parties agree that the rent was \$1,200.00 per month and that the Tenant and her co-tenant would each be responsible for paying \$600.00. The Parties also agree that after the Tenant’s co-tenant vacated the rental unit, the Tenant assumed sole responsibility for paying the full amount of the rent or \$1,200.00. Rent is due in advance on the 1st day of each month.

The Parties agree that on August 2, 2012, the Landlord served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2012

because she had rent arrears of \$600.00 for August. The Parties also agree that the Tenant paid \$300.00 of the arrears on August 8, 2012 and a further \$300.00 on August 10, 2012. The Landlord said the Tenant was given receipts for these payments and admitted they did not state that they were for use and occupancy only and did not reinstate the tenancy. The Tenant said she did not receive receipts for these payments.

The Parties also agree that on August 13, 2012, the Landlord served a person who was residing in the rental property with a One Month Notice to End Tenancy for Cause dated August 13, 2012. The sole ground alleged on that Notice was that the Tenant was repeatedly late paying rent. The Tenant denied that the person to whom the One Month Notice was served was residing in the rental property at the time however she admitted that she received the One Month Notice from him. The Parties agree that the Tenant has made the following late rent payments:

- February 2012 rent: paid in full February 3, 2012;
- April 2012 rent: paid in full on April 19, 2012;
- June 2012 rent: \$1,160.00 on June 8, 2012, \$40.00 on July 3, 2012
- July 2012 rent: July 3, 2012
- August 2012 rent: paid in full by August 10, 2012

The Tenant claimed that the Landlord's agent (ie. her father) gave her permission to pay the \$40.00 arrears for June 2012 on July 3, 2012. The Tenant also claimed that the Landlord's agent agreed to other late payments because when she told him the payment would be late he advised her to make sure that she paid the money. The Landlord denied that she or her agent condoned late rent payments and argued that was why the Tenant was given 10 Day Notices in April 2012 and in August 2012.

Analysis

Section 46(4) of the Act states that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

I find that there were rent arrears of \$600.00 on August 2, 2012 when the Tenant received the 10 Day Notice to End Tenancy. I also find that the Tenant did not pay the arrears in full until August 10, 2012, or 8 days after being served with the 10 Day Notice. However, it is a principle of common law that if a Landlord accepts a payment of rent from a Tenant after the 5 days granted on the 10 Day Notice and does not make it clear to the Tenant that the tenancy will still end, then the Landlord is deemed to have reinstated the tenancy. I find that the Landlord did not make it clear to the Tenant that she was accepting her payments on August 8 and 10, 2012 for use and occupancy only

and as a result, I find that the 10 Day Notice to End Tenancy dated August 2, 2012 is unenforceable and it is cancelled.

The Tenant argued that the One Month Notice to End Tenancy for Cause dated August 13, 2012 was served on a person who did not reside in the rental unit however this was denied by the Landlord who claimed the person advised her that he was living there. In any event, the Tenant admitted that she received the One Month Notice and accordingly, I find pursuant to s. 70(2)(b) of the Act that the Tenant was sufficiently served with the One Month Notice on August 13, 2012 for the purposes of the Act.

RTB Policy Guideline #38 (Repeated Late Payment of Rent) states that “*three late payments are the minimum number sufficient to justify a notice under these provisions.*” I find that the Tenant has been late paying rent on 5 occasions in the past 7 months. With the exception of the \$40.00 late payment for June which was paid on July 3, 2012, I find that there is insufficient evidence to conclude that the Landlord gave the Tenant permission to make the late payments. In other words, the fact that a tenant advises a landlord that they will be late paying rent and the Landlord accepts the late payment is not sufficient to conclude that the landlord agreed that the Tenant could make the late payment. Furthermore, in this case, I find that the Landlord did not condone late payments because she gave the Tenant two 10 Day Notices when her payments were exceedingly late. Consequently, I find that there is evidence to support the ground for ending the tenancy on the One Month Notice to End Tenancy for Cause dated August 13, 2012 and the Tenant’s application to cancel it is dismissed without leave to reapply.

The Landlord requested and I find pursuant to s. 55(1) of the Act that she is entitled to an Order of Possession to take effect on September 30, 2012 at 1:00 p.m.

Conclusion

The Tenant’s application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated August 2, 2012 is granted but her application to cancel a One Month Notice to End Tenancy for Cause dated August 13, 2012 is dismissed without leave to reapply. As the tenancy will be ending, the Tenant’s applications for a rent reduction and for an Order that the Landlord comply with the Act or tenancy agreement are also dismissed without leave to reapply. An Order of Possession to take effect on September 30, 2012 has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia. 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: September 06, 2012.

Residential Tenancy Branch