



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MT; CNR; CNC; MNDC; AAT; RR; SS; FF; O

Introduction

This Hearing was convened to consider the Tenant's application to be allowed more time to make an application to cancel a Notice to End Tenancy; to cancel a Notice to End Tenancy for Cause and a Notice to End Tenancy for Unpaid Rent; for compensation for damage or loss under the Act, regulation or tenancy agreement; for an Order allowing access to or from the unit for the Tenant and/or her guests; for a reduction in rent; an Order that the Tenant can serve documents in a different way than required by the legislation; and to recover the cost of the filing fee from the Landlords..

The parties gave affirmed testimony at the Hearing.

The Tenant testified that the Landlords were served with the Notice of Hearing documents by registered mail sent August 24, 2012.

Preliminary Matters

Both parties provided a large amount of irrelevant documentary evidence, including documents that were filed late. During the Hearing, the parties agreed on all relevant facts and therefore the only documentary evidence that was necessary to be considered was the Notice to End Tenancy for Unpaid Rent issued August 20, 2012 (the "Notice").

The Tenant has applied to cancel a Notice to End Tenancy for Cause. It was determined that no such notice exists and therefore this portion of her application is dismissed.

The Tenant has applied to be allowed more time to file her application to cancel the Notice. It was determined that the Tenant filed her Application for Dispute Resolution one day after being served with the Notice and therefore this part of her application is dismissed as the Tenant filed within the 5 days allowed under the legislation.

The Tenant has applied for an order that she may serve the Landlord with documents in a different way than is required by the Act. The Landlords acknowledged that they received the Tenant's documents via an e-mail account that they had set up specifically for this purpose and therefore I am satisfied that the Landlords have been sufficiently served **for the purposes of this application.**

The Residential Tenancy Rules of Procedure, Rule 2.3, states that for disputes to be combined on an application they must be related. I find that that the Tenant's requests for compensation for damage or loss under the Act, regulation or tenancy agreement; and Orders with respect to access and rent are not sufficiently related to the Tenant's request to cancel the Notice. Therefore I dismissed these portions of the Tenant's application **with leave to reapply**.

The Hearing continued with respect to the Tenant's application to cancel the Notice and for recovery of the cost of the filing fee from the Landlords.

Issue(s) to be Decided

- Should the Notice cancelled?

Background and Evidence

The parties agreed that rent is \$700.00, due on the first day of each month. The Tenant did not pay all of the rent when it was due on August 1, 2012, so the Landlord issued the Notice and handed it to the Tenant on August 20, 2012. The Tenant acknowledged that she did not pay all of the rent on August 1, 2012. She also acknowledged that she did not pay full rent for the month of September, 2012.

The Tenant testified that she withheld rent because the Landlord owed her \$200.00 for a vet bill and \$10.00 for a handle. The parties acknowledged that the Tenant has an Order from a Dispute Resolution Officer made August 13, 2012, that the Tenant could deduct \$35.00 from rent in compensation for loss of internet services. However, the Tenant acknowledged that she does not have an Order from a Dispute Resolution Officer allowing her to deduct any other amount from rent owed to the Landlord.

The parties did not enter into an agreement to reinstate the tenancy when the Tenant made partial payment of September's rent. The Landlord also issued a receipt for "use and occupancy only". The Landlord testified that the Tenant still owes \$210.00 in unpaid rent.

The Landlord asked for an Order of Possession.

Analysis

Section 26 of the Act provides that a Tenant must pay rent when it is due, unless the Tenant has a right under the Act to deduct all or a portion of the rent.

The Tenant's remedy would have been to file an Application for Dispute Resolution prior to August 1, 2012, and seek an Order from the Director that she could deduct a portion of the rent.

I find that the Tenant did not pay rent when it was due, or within 5 days after receipt of the Notice, as required by Section 46 of the Act. **Therefore, the Tenant's application to cancel the Notice is dismissed.** I find that the Notice is a valid Notice.

I find that the tenancy ended on August 30, 2012.

Section 55 of the Act provides that I must grant an Order of Possession to the Landlord if the Landlord makes an oral request for the Order and I dismiss the Tenant's application to cancel it. Therefore, I hereby provide an Order of Possession **effective 2 days after service of the Order upon the Tenant.**

The Tenant has not been successful in her application and I find that she is not entitled to recover the cost of filing the application from the Landlords.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy issued August 1, 2012, is **dismissed.**

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenant.** This Order may be filed in the Supreme Court of British Columbia and 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: September 21, 2012.

Residential Tenancy Branch