



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: OPR, OPC, MNR and FF
Tenant: CNC, RP, RR and FF

Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application of November 19, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent and a one-month Notice to End Tenancy for repeated late payment of rent both served by posting on the tenants' door on November 5, 2012. The landlord also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding.

By application also of November 19, 2012, the tenants sought to have the Notice to End Tenancy for cause set aside, an order for repairs, a rent reduction or abatement and recovery of their filing fee.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession on either of the Notices to End Tenancy and a Monetary Order for unpaid rent and recovery of their filing fee?

Are tenants entitled to have either Notice to End Tenancy set aside, an order for repairs to the rental unit, a rent reduction and recovery of their filing fee?

Background, Evidence and Analysis

This month to month tenancy began on December 18, 2012. Rent is R800 per month.

According to the tenants, when the tenancy began in mid-month, the parties had agreed by handshake that the rent due date would be the 15th of each month. According to the landlord, because the tenants had been having difficulty paying the rent on the 15th, the parties had adjusted the rent due date to the 1st day of the month some time in the past.

In the absence of a written rental agreement and any documentary evidence verifying that the rent due date had been changed to the first of the month, I must find that the Notice to End Tenancy served November 5, 2012 for unpaid rent was premature. The landlord acknowledged receiving the rent sent by registered mail, albeit late.

Similarly, the landlord stated he had not yet received the December rent. The tenant's gave evidence that it had been sent by registered mail on December 15, 2012. If, in fact, the landlord does not receive the December rent, he is at liberty to serve another 10-day notice to end tenancy.

As to one-month Notice to End Tenancy for repeated late payment of rent, the landlord has submitted no written evidence such as a tenant ledger recording the dates on which rent was paid. In addition, there appears to have been a long standing practice of irregularly timed rent payments. In the absence of documentary evidence recording rent payments, I cannot uphold the notice for repeated late payment.

I have recommended to the parties that they either create a written rental agreement stating the rent due date and/or that the landlord write to the tenants stating the rent due date and putting the tenants on notice that late rent will not be tolerated in future.

As to the tenants' application, the branch received an emailed 15-page package from the tenants on December 19, 2012. The tenants referred to a package of receipts that were not in the emailed version and the CD of photographs had not arrived by the time of the hearing.

The landlord stated that he had received none of the tenants' evidence.

Under the Rules of Procedure, evidence submitted after the original application must be in the hands of the other party and the branch at least five business days before the hearing.

As the landlord has not had the opportunity to view and prepare a response to the tenants' late evidence, I dismiss the tenants' application with leave to reapply.

The parties briefly discussed the need for repairs to the rental unit, and I have provided both with a copy of a copy of our "*Guide for Landlords and Tenants in British Columbia*."

Conclusion

The landlord's application is dismissed as one Notice to End Tenancy was premature and he had provided no supporting evidence for the other. The landlord is at liberty to serve new notices if circumstances indicate it is appropriate to do so.

The tenants' application is dismissed with leave to reapply for want of evidence as it had not been provided to the landlord and had not been received by the branch on time.

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: December 21, 2012.

Residential Tenancy Branch