



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNR.

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 26, 2012 and effective December 13, 2012.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?

The burden of proof is on the landlord/respondent to justify the reason for the Ten-Day Notice.

Background and Evidence

The tenancy began on February 1, 2012 with rent of \$695.00 plus utilities payable to the landlord under a specific term in the tenancy agreement. A copy of the agreement was in evidence, signed by the landlord and the tenant.

At the start of the tenancy a security deposit of \$347.50 was paid. Submitted into evidence by the applicant/tenant in support the application was, a copy of the Ten-Day Notice to End Tenancy dated May 2, 2012. Other evidence from the tenant, included a copy of a receipt from the landlord for \$142.00 dated April 23, 2012. No copy of the tenancy agreement was in evidence.

The landlord testified that the tenant fell into arrears for hydro payments and failed to pay the amount demanded in writing within 30 days. The landlord testified that a Ten

Day Notice to End Tenancy for Unpaid Rent was issued and served by registered mail sent on November 26, 2012. According to the landlord, the tenant did not pay the arrears and now owes additional hydro charges for an invoice received recently.

The tenant acknowledged receiving the Ten Day Notice to End Tenancy for Unpaid Rent and also acknowledged that she owed some payments for hydro, but disputed the amounts being claimed by the landlord. The tenant also testified that she required the hydro bills issued by the landlord to have her name at the top, instead of “*tenant*” in order to be submitted to the Ministry for assistance. The tenant testified that the landlord has refused to issue the written demand for utilities with her name on the document. The tenant did receive letters from the landlord specifying that she owed payments for the hydro, but according to the tenant, these letters will not suffice for her to receive extra funds from the Ministry to cover the utilities.

Analysis – Notice to End Tenancy

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46, (6) of the Act states that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give a Ten-Day Notice based on utilities owed.

I find that the tenant did not pay the utilities owed within 5 days of receiving the Notice to End Tenancy, which would have served to cancel the Notice. While I make no findings on the actual amount of the arrears, I do accept that the tenant is in arrears for utilities in some amount.

Accordingly, I find that must dismiss the tenant’s application requesting an order to cancel the Ten-Day Notice. The tenant’s application is dismissed without leave to reapply.

During the hearing the landlord made a request for an order of possession. Under the provisions of section 55(1) of the Act, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy.

Based on the testimony and evidence discussed above, I hereby issue an Order of Possession in favour of the landlord effective two days after service to the tenant. The tenant must be served with the order of possession. Should the tenant fail to comply

with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The tenant is not successful in the application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and because the tenant's application is dismissed and the Notice upheld, the landlord's request for an Order of Possession is granted.

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: January 09, 2013.

Residential Tenancy Branch

