



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on November 30, 2006. Monthly rent is due and payable in advance on the first day of each month. Currently, the rent is \$1,003.46. A security deposit of \$450.00 was collected at the start of tenancy.

Arising from rent which remained unpaid in full for January and February, the landlord issued a 10 day notice to end tenancy for unpaid rent dated February 5, 2013. The notice was served by way of posting on the tenants' door on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is February 15, 2013.

Subsequently, by way of several separate payments between February 10 and March 19, 2013, the tenants paid the full amount of rent owing up to March 31, 2013, in addition to all fees assessed for late payment of rent, as well as reimbursing the \$50.00 filing fee paid by the landlord for this application. The parties agree that no receipts issued in exchange for any of the aforementioned rent payments bear the notation "for use and occupancy only," and the tenants wish to continue the tenancy.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated February 5, 2013. Thereafter, by way of several payments the tenants made full payment of rent up to March 31, 2013, in addition to full payment of all fees assessed for late payment of rent. I also find that the tenants reimbursed the landlord's \$50.00 filing fee, such that presently the tenants owe no monies to the landlord.

Residential Tenancy Policy Guideline # 11 speaks to "Amendment and Withdrawal of Notices," and provides in part as follows:

A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (ie: withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.

The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- whether the receipt shows the money was received for use and occupation only.
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and
- the conduct of the parties.

In the circumstances of this dispute, I note that the tenancy has been continuous for a period of nearly 6½ years. Further, the parties agree that prior to today's hearing, no previous hearings have been convened in order to resolve any dispute(s) between them. In consideration of the foregoing, and in the absence of receipts issued for recently late payments of rent which bear the notation "for use and occupancy only," and in the absence of any evidence that the landlord otherwise specifically informed the tenants that the late payments would be accepted for use and occupancy only, I find that the landlord's acceptance of late payments has the effect of reinstating the tenancy. Accordingly, the landlord's 10 day notice to end tenancy is hereby set aside, and the tenancy continues uninterrupted.

As all monies owed to the landlord have now been paid by the tenants, the landlord's application for compensation is hereby dismissed.

Conclusion

The landlord's notice to end tenancy is hereby set aside, and all aspects of the landlord's application are dismissed.

The tenancy continues in full force and effect.

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: March 20, 2013

Residential Tenancy Branch

