



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order of possession for the rental unit due to unpaid rent, monetary order for unpaid rent, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to vacant possession of the rental unit, to a monetary order for unpaid rent, and to recover the filing fee?

Background and Evidence

A tenancy agreement entered into evidence by the landlord shows the tenancy began on July 15, 2007. I also heard evidence that the tenant started living in the rental unit in August 2006.

The current monthly rent is \$1040 and the tenant paid a security deposit of \$400.

The rental unit is located in the lower suite of the residential property. There appears to be another tenant in an unrelated tenancy.

The landlord, in addition to seeking an order of possession for the rental unit, is also claiming monetary compensation in the amount of \$3120 for unpaid rent for March, April and May 2013.

The landlord's relevant documentary evidence included a copy of the tenancy agreement and a copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

I heard evidence that when this tenancy began, the landlord was married to ES and they both lived in the upper suite, and the tenant lived in the lower suite, along with another tenant apparently in an adjoining lower suite. Since that time, the landlord and ES have divorced, with ES remaining in the upper suite.

The landlord agreed that he has not resided in the residential property for at least two years and further agreed that his ex-spouse collected the rent from the tenant since that time; however, according to the landlord, circumstances have changed since approximately November 2012, when his ex-spouse ceased depositing the rent cheques into a joint bank account from which the mortgage on the residential property was paid.

The landlord argued that since that time, as the mortgage has not been paid regularly, the home is in foreclosure and due to be listed for sale.

The landlord said that he has approached the tenant several times this year and asked her to pay her monthly rent payments to him directly as the home is titled in his name and he is the only landlord listed on the tenancy agreement, not jointly with ES. Despite this request, according to the landlord, the tenant has not complied, instead continuing to pay her monthly rent to ES.

In response, the tenant testified that she is current in her monthly rent and has made every payment since the tenancy began in the same method, by putting the cheque through the door in the upper suite where the landlord formerly lived and where ES still lives.

The tenant submitted that she has not paid the landlord directly in the two years since he's been gone from the upper suite, and that the landlord's and ES's marital difficulties were not her problem.

The tenant further submitted that the landlord only approached her in May at work and asked her to pay him directly; however the tenant said she was in a difficult position as she has always paid her rent by putting the cheque upstairs.

The tenant's relevant documentary evidence included copies of proof of rent payments for the three months in question, a written statement from ES in support of the tenant's position and a copy of a consent order from the Provincial Court of British Columbia, banning the landlord from attending the rental unit or premises without the expressed advanced permission from ES.

It is noted that the written statement from ES reflects her submission that she is co-owner of the residential property, that she helped purchase the property, and that she and the landlord both acted as landlords throughout the tenancy, approving the tenants and preparing paperwork. The statement goes on to say that the landlord moved out of the rental unit, called the "family home," in October 2011, and cut off all responsibilities towards the home and the tenancy. ES submitted that the landlord had all utilities disconnected without notice and that he has refused to make any repairs in the rental unit, with the response from the landlord to ES being "You fix it they're your tenants."

The statement from ES goes onto say that she contacted her lawyer about this proceeding, with the lawyer informing her that this was a marital issue, that it was her right to have anyone she wished to live with her at the residential property, and that if the landlord wished to pursue the matter, he should address it at the Supreme Court of British Columbia.

ES confirmed that the tenant was current in her rent payments.

Although ES supplied only a written statement, it is important to note that the landlord did not dispute the contents.

Another piece of documentary evidence submitted by the tenant, was a copy of a text message sent from the landlord to ES, sent on June 10, 2013, as follows: "Obviously like you said, the rental agreement includes you as part owner of the home. So they have nothing to worry about when they win at the hearing."

Analysis

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant.

In the circumstances before me, I find the landlord has not submitted any evidence that the tenant has not paid her monthly rent. In fact the undisputed evidence is that the tenant has fully paid her rent and has never missed a payment or been late.

The tenancy agreement reflects the landlord's address to be that of the residential property to where the tenant has paid her rent since the tenancy began. Although the circumstances between the landlord and ES have changed, for the purposes of this tenancy and the tenancy agreement, nothing has been altered and the landlord is not permitted under the *Act* to change a term of a tenancy agreement unilaterally. Further, I do not have authority under the *Act* to change an enforceable agreed upon term of the tenancy agreement.

I find the landlord's position that the rent payments to be re-directed to him to be further problematic for the landlord due to his text message confirming ES's statement, that she, ES, to whom rent payments are given, is co-owner of the residential property.

At the end of the hearing, I was left with the impression that the underlying issues at stake here were differences between the landlord and ES, and either have been dealt with or will be dealt with in the Supreme Court in a divorce proceeding, and therefore in the exclusive jurisdiction of the Supreme Court. If this is not the case, the landlord failed to supply evidence to the contrary.

Due to the above, I find the landlord has not submitted any evidence that the tenant owes unpaid rent and I therefore find the 10 Day Notice to End Tenancy dated May 18, 2013, is invalid and of no force or effect and I hereby dismiss the landlord's application, with the effect that this tenancy continue until it otherwise ends under the *Act*.

As I have dismissed the landlord's application, I decline to award him recovery of the filing fee.

The landlord is advised that should he continue to issue vexatious Notices to the tenant, he may be subjected to the tenant seeking compensation for the loss of her quiet enjoyment which is afforded her under the *Act*.

Conclusion

The landlord's application is dismissed.

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* and is being mailed to both the applicant and the respondent.

Dated: June 25, 2013

Residential Tenancy Branch