



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

CORRECTED DECISION

Dispute Codes CNR, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was sufficiently served on the Tenant by mailing, by registered mail to where the tenant resides on June 7, 2013. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated June 6, 2013?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

This case involves a disputed matrimonial matter. The applicant is married to the landlord's brother. They are presently going through divorce proceedings.

The landlord is the registered owner of the rental property which was purchased in April 2008. He lived in the rental property for much of the time since then. However, in April 2012 the landlord moved out of the rental property and moved home to live with his parents. The applicant, the landlord's brother and their infant child moved in.

There is a tenancy agreement dated May 1, 2012 signed by the landlord and his brother CY that provided that the rent was \$1250 per month commencing on May 1, 2012 and on the first day of each month thereafter. The document was not signed by the applicant.

There have been payments of \$1250 per month although it is disputed whether all of the rent payments have been made.. The applicant submits those payments are not consistent with a rent payment due on the first of each month and the bank records show they were deposited at different times throughout the month. CY and the applicant had a falling out and CY vacated the rental unit in December 2012. He continued to make rental payments until April 2013 and then stopped making payments.

The applicant submitted this is not a tenancy relationship and that the Residential Tenancy Act does not have jurisdiction. She further submits that the landlord failed to prove there was arrears of rent at the time the Notice to End Tenancy was served. The applicant has filed matrimonial proceedings in the Supreme Court of British Columbia. However, she has not claimed an equitable interest in the rental property at this stage. The landlord submits that I have jurisdiction and the rent for April, May, June and July have not been paid.

After hearing the evidence and submission of the parties I determined this is a Residential Tenancy matter and that I have jurisdiction. I am satisfied this is a landlord

tenant situation. The applicant has not made a claim that she has a beneficial interest in the property.

Settlement:

This is a disputed claim. At the end of the hearing the parties reached a settlement and they asked that I record the settlement pursuant to section 63(2) of the Residential Tenancy Act as follows:

1. The parties mutually agree to end the tenancy on August 31, 2013.
2. The parties request that the arbitrator issue an Order for Possession for that date.

The husband of the applicant was present at the hearing. He represented that he would pay the electrical, hydro and cablevision bills for the months of July and August.

Order for Possession

As a result of the settlement I granted an Order for Possession effective August 31, 2013. All other claims in the Application for Dispute Resolution are dismissed.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: July 11, 2013

Residential Tenancy Branch

