



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST REALTY GROUP (POWELL RIVER) LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MT

Introduction

This hearing dealt with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

In filing this Application the tenants indicate they received the 10 Day Notice on the "10th" and requested more time to file this Application. If the tenants received the 10 Day Notice on June 10th in filing their application on June 13, 2013 they were within the five day time limit provided by the Act and there is no need to consider whether they should be provided more time to file this Application.

Issue(s) to be Decided

1. Is there a basis to cancel the 10 Day Notice to End Tenancy for Unpaid Rent?
2. Is the landlord entitled to an Order of Possession?

Background and Evidence

The fixed term tenancy commenced March 15, 2013 with an expiry date of June 30, 2013. The tenancy agreement provides that at the end of the fixed term the tenancy ends and the tenants must move out of the residential premises.

The monthly rent of \$850.00 was due on the 1st day of every month. The tenant acknowledged that they failed to pay the rent due under the tenancy agreement and submitted that on June 10, 2013 they received a 10 Day Notice to End Tenancy for Unpaid Rent. The 10 Day Notice has a stated effective date of June 17, 2013.

The tenant acknowledged that rent is owed to the landlord. The basis for disputing the Notice was that the tenants did not have a stove for several weeks and there were water and/or sewage leaking into the basement.

During the hearing the tenant stated they have keys to new living accommodation and requested permission to occupy the rental unit until July 24, 2013 in order to mow the lawn.

The landlord requested possession of the rental unit be returned to the landlord immediately considering the unpaid rent and because the fixed term tenancy has ended.

Analysis

Under the Act, a tenant must pay rent when due under the terms of the tenancy agreement even if the landlord violates the Act, regulations or tenancy agreement; unless, the tenant has a legal right to withhold all or part of the rent as provided by the Act. The Act provides for very specific and limited circumstances when a tenant may withhold rent and I was not provided any evidence to suggest the tenants had the legal right to withhold rent. Where a tenant is in need of repairs or a rent reduction there are specific remedies available to the tenant; however, any rent reduction must be first authorized by the landlord or an Arbitrator upon Application for such. I find I was not provided any evidence to suggest the tenants had been authorized to reduce or withhold rent payable. Therefore, I find no basis to cancel the 10 Day Notice to End Tenancy and I dismiss the tenants' Application.

As the tenants claim to have received the 10 Day Notice on June 10, 2013 the effective date of the Notice automatically changes to read June 20, 2013 pursuant to sections 47 and 53 of the Act. As I have upheld the 10 Day Notice I find the tenancy ended June 20, 2013 due to unpaid rent.

As the tenancy ended June 20, 2013 and the tenants continue to occupy the rental unit, I grant the landlord's request for an Order of Possession pursuant to section 55 of the Act. I provide an Order of Possession to the landlord with an effective date of two (2) days after service.

Conclusion

The tenants request to cancel a Notice to End Tenancy has been dismissed and the landlord has been provided an Order of Possession effective two (2) days after service.

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 16, 2013

Residential Tenancy Branch

