



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR

Introduction:

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Tenant stated that she served the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence to the Landlord, via registered mail, on July 18, 2013. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Issue(s) to be Decided:

Should the Notice to End Tenancy be set aside?

Background and Evidence:

The male Landlord stated that this tenancy began approximately ten years ago and the Tenant stated that it began in 2002. The Landlord and the Tenant agree that there is a written tenancy agreement, dated December 06, 2006, a copy of which was submitted in evidence. The parties agree that this tenancy agreement was created several years after the tenancy began.

The male Landlord stated that he understands the Tenant was obligated to pay annual rent of \$3,600.00, to be paid sometime in December of each year. The Tenant stated that she was obligated to pay rent of \$300.00 per month, and that there was no agreement on when this money should be paid.

The tenancy agreement indicates that the monthly rent is \$300.00; that the Tenant paid \$4,200.00 cash; and that the Tenant paid \$3,300.00 to repair the roof. A notation on the agreement indicates the \$4,200.00 was paid on December 15, 2006.

The male Landlord stated that the female Landlord, who is his mother, suffers from a medical condition that significantly impairs her memory; that the delay in pursuing this matter is a result of that medical condition; that his mother has no memory of rent being paid recently; that he suspects rent has not been paid for many years; that he has checked his mother's bank statement and he can find no record of a rent payment being made since the start of 2010; that the Tenant owes at least \$6,000.00 in rent; that typically rent was paid by direct deposit into his mother's bank account; that he does not believe rent has been paid in cash since 2010, as his mother does not deal in cash and does not keep cash in her home; and that his mother may have signed receipts but she would not be aware of what she was signing.

The Tenant initially stated that she has paid \$6,800.00 in rent "over the years" and later in the hearing she stated that she paid a total of \$8,600.00 in rent. In her written submission the Tenant declared that she paid rent in advance for years, months, and days, as money became available.

The Tenant initially stated that she paid rent of \$300.00, in cash, on March 15, 2013. She subsequently stated that she did not pay any rent in March of 2013 because no rent owed.

The Tenant initially stated that she paid rent of \$300.00, by cheque, on April 15, 2013. She subsequently stated that she made this payment in cash. No receipt was submitted for this alleged payment.

The Tenant initially stated that she paid rent of \$500.00, in cash, on June 10, 2013 and that she has a receipt for this payment. She subsequently stated that she made a cash payment of \$300.00 on June 10, 2013. No receipt was submitted for this alleged payment.

The Tenant stated that she paid rent of 300.00, in cash, on May 15, 2013, which is consistent with her subsequent testimony. No receipt was submitted for this alleged payment.

The Tenant stated that she deposited \$4,200.00 into the Landlord's bank account on December 15, 2010. No receipt was submitted for this alleged payment.

The Tenant stated that she paid \$283.00 for electrical work, in lieu of rent, sometime near the end of January 2011. No receipt was submitted for to corroborate this payment

The Tenant stated that she paid "one hundred or so bucks" on February 01, 2011. No receipt was submitted for this alleged payment.

The Tenant submitted a hand written note that appears to have been signed by the female Landlord, which indicates rent was paid for the period between December 15, 2010 and January 15, 2011.

The Tenant submitted a letter, dated December 16, 2005, which appears to have been signed by the female Landlord, which indicates that she receives \$300.00 per month in rent for the rental unit.

The Tenant submitted a copy of the Tenant's bank statement, dated December 31, 2012. There is nothing on this statement that would indicate rent was paid during December of 2012.

The Tenant argued that even if she does owe rent for 2010, the Landlord does not have the right to collect rent for that year as more than two years have passed.

The Landlord and the Tenant agree that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of July 25, 2013, was personally served to the Tenant on, or about, July 12, 2013. The Notice declared that the Tenant owed \$6,000.00 in rent that that was due in 2010.

The Landlord and the Tenant agree that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of August 11, 2013, was personally served to the Tenant on, or about, July 30, 2013. The Notice declared that the Tenant owed \$6,000.00 in rent that that was due for the period between 2010 and 2013.

The male Landlord stated that approximately ten days ago he looked inside the rental unit and it appeared that the rental unit was vacated. The Tenant stated that she does not currently live at the rental unit; that she retains legal possession of it; and that she would like to continue to retain legal possession of it, as she believes the rent is paid up to June 30, 2014. The Landlord was very clear during the hearing that he wishes to regain legal possession of the rental unit.

Analysis

I find that male Landlord's testimony was forthright and direct. I find his testimony that he can find no record of a rent payment since 2010 and that he has no knowledge of his mother receiving a rent payment in cash since 2010 to be credible. Although it is possible that rent payments were made to his mother in cash, I find it likely, given her medical condition, that he would be aware of a cash payment.

Conversely, I find the Tenant's testimony was disjointed and inconsistent. In reaching this conclusion I was influenced, in part, by the fact that during the hearing she stated that she paid rent of \$300.00, in cash, on March 15, 2013 and she later retracted that testimony; that during the hearing she stated that she paid rent of \$300.00, by cheque, on April 15, 2013 and she later stated that she made this payment in cash; that during the hearing she stated that she paid rent of \$500.00, in cash, on June 10, 2013 and she

later stated that she made a cash payment of \$300.00 on June 10, 2013. As a result of these inconsistencies I find the Tenant's testimony highly unreliable.

On the basis of the tenancy agreement that was submitted in evidence, I find it reasonable to conclude that the Tenant paid \$4,200.00 in rent on December 15, 2006 cash and that the Tenant paid \$3,300.00 to repair the roof on, or about, December 15, 2006.

I find that the Tenant has submitted insufficient evidence to show that she deposited \$4,200.00 into the Landlord's bank account on December 15, 2010. In reaching this conclusion, I was heavily influenced by the absence of documentary evidence that corroborates this evidence, which should have been readily available. In the event this amount had been paid, I find it likely that she would have a receipt for the payment, given that she produced a payment that declared she had paid rent, in an undisclosed amount, for the period between December 15, 2010 and January 15, 2011.

Given that I have found the Tenant's testimony unreliable, I find that I cannot accept her uncorroborated testimony regarding the alleged payment on December 15, 2010. In reaching this conclusion I was influenced, to some degree, by the fact that she paid this precise amount on December 15, 2006 and I find it entirely possible that she has simply confused the dates.

I am not convinced that the Tenant actually knows how much rent has been paid during this tenancy. In reaching this conclusion I was influenced, in part, by her testimony that she paid "one hundred or so bucks" on February 01, 2011 and by the difficulty she had explaining all of the payments she allegedly made, although she was allegedly in possession of many receipts, which she did not submit in evidence.

If I were to accept the Landlord's testimony that this tenancy began approximately ten years ago, the Tenant would have been required to pay approximately \$36,000.00 in rent for the duration of the tenancy. If I were to accept the Tenant's testimony that the tenancy began in 2002, the Tenant would have been required to pay more than \$36,000.00 in rent.

I find that I am unable to determine, with any degree of certainty, how much rent has been paid during this tenancy. On the basis of the information before me, I find it unlikely that the Tenant has paid all of the rent that was due during the tenancy. Even if I were to accept the Tenant's testimony that she has paid a total of \$8,600.00 in rent, I find that some rent would still be due.

I have placed no weight on the Tenant's argument that more than two years has passed since rent for 2010 has allegedly not been paid. As the evidence shows that rent is currently outstanding, including rent that was recently due, I find section 60 of the Act does not apply.

If rent is not paid when it is due, section 46(1) of the *Residential Tenancy Act (Act)* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. On the basis of the undisputed evidence, I find that the Tenant was served with a Notice to End Tenancy on, or about, July 12, 2013, which required her to vacate the rental unit by July 25, 2013, and that she was served with a Notice to End Tenancy on, or about, July 30, 2013, which required her to vacate the rental unit by August 11, 2013. As the Landlord has grounds to end this tenancy pursuant to section 46 of the *Act* and a Notice to End Tenancy was served pursuant to section 46 of the *Act*, I dismiss the Tenant's application to set aside a Notice to End Tenancy for Unpaid Rent.

Conclusion

As the male Landlord made it very clear during the hearing that he would like legal possession of the rental unit, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*. The Order of Possession is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

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: August 22, 2013

Residential Tenancy Branch

