



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CMHA Kootenays
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a 10 Day Notice to End Tenancy.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Has the tenant sufficient evidence to show that the 10 Day Notice to End Tenancy can be set aside?

Background and Evidence

The parties agree that this tenancy started in October, 2006. Rent for this unit is \$963 per month. The tenant pays \$475.00 per month and the remainder of rent of \$488.00 is subsidized by BC Housing. Rent is due on the first day of each month.

The landlord testifies that the tenant's information manual informs the tenant that if the tenant cannot pay their bill for damages within 30 days, they must negotiate a payment agreement within five days of receiving the bill. The process for negating damage payments is the same as for rent arrears. The landlord testifies that the tenant did not pay the damages bill and the tenant was served with a 10 Day Notice to End Tenancy on June 14, 2013 by posting it to the tenant's door. This Notice informed the tenant that rent is owed of \$404.60. The tenant has five days to either pay the amount, or file an application to dispute the Notice. Or the tenancy will end on June 28, 2013.

The landlord testifies that no payment has been received by the tenant for this amount. The landlord agrees that the tenant has paid rent and no actual rent or utilities is outstanding.

The tenant testifies that there is no outstanding rent for June and the Notice should have no effect as it does not apply for damage claims but is for unpaid rent and utility claims. The tenant therefore seeks to have the Notice set aside. The tenant testifies that the issue of damages and who is responsible to pay for them is still under dispute and was not determined at the previous hearing.

Analysis

A landlord is only able to issue a 10 Day Notice to End Tenancy when there is rent or utilities outstanding. If the amount relates to repairs this does not fall within the scope of the 10 Day Notice to End Tenancy or section 46 of the Act. As the landlord has not shown that there is any rent or utility arrears then the Notice is invalid and has no force or effect.

At the hearing the landlord withdrew the 10 Day Notice to End Tenancy.

Conclusion

The 10 Day Notice to End Tenancy for unpaid rent or utilities dated, June 14, 2013 has been withdrawn by the landlord and the tenancy will continue.

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 19, 2013

Residential Tenancy Branch

