



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 549331 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR OPR CNC OPC

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46; and
- b) To cancel a notice to end tenancy for cause pursuant to section 47.

Service:

The Notice to End Tenancy is dated September 9 to be effective September 19, 2013 and the tenant confirmed it was served on him by posting it on his door on September 9, 2013. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution on September 17, 2013 and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is unpaid rent and/or sufficient cause to end the tenancy or has the tenant demonstrated that the notice to end tenancy for unpaid rent and/or cause should be set aside and the tenancy reinstated? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

The landlord had some problems with the telephone and attended the conference late. However, both parties did attend the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced about 3 years ago, it is now a month to month tenancy, rent is \$480 a month and a security deposit of \$190 was paid about 3 years ago.

The advocate for the tenant pointed out that the Notice to End Tenancy was defective. He said it was an old two page Notice dated in 2000 which combined both the 10 day Notice to End Tenancy for unpaid rent and the one month Notice for cause. The

landlord said he did not realize there was a current Notice; I pointed out to him that updated Notices are provided on the Residential Tenancy Branch website.

The advocate also noted that the tenant paid his rent in full on September 15, 2013 which is four days after the deemed service of the posted Notice. The landlord agreed he received the rent in full but said it was on September 18, 2013. He said he gave the tenant a receipt but did not note on the receipt that the acceptance of the rent was for “use and occupancy only” and the tenancy was not reinstated. The landlord also outlined problems with the housekeeping of the tenant. I advised him that he needed to follow the correct procedure in warning the tenant and then issuing a one month notice to end tenancy on the correct, current form.

No copy of the Notice to End Tenancy was submitted but the advocate said it was faxed to our office on September 30, 2013, so it will likely be received from the evidence queue for the file. No further documents were received except a letter from the advocate to a society requesting some assistance for the tenant.

Analysis:

Section 52 of the Act states that in order to be effective, a notice to end tenancy must be in writing and must when given by a landlord, be in the approved form (52(e)). I find that the Notice to End Tenancy, in this case, was not on the approved form. Therefore it is not effective to end the tenancy. Furthermore, I find by accepting rent after service of the notice without qualifying that he was not reinstating the tenancy, the landlord voided his notice. For these reasons, the Notice to End Tenancy dated September 9, 2013 is set aside and the tenancy is reinstated.

Conclusion:

The Notice to End Tenancy dated September 9, 2013 is hereby set aside and cancelled. The tenancy is reinstated. No filing fee was involved.

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: October 03, 2013

