



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for unpaid rent.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on or about October 4, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on May 1, 2012 as a month to month tenancy. Rent is \$500.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$500.00 in advance of the tenancy.

The Landlord said he served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated September 27, 2013. He served the Notice on September 27, 2013 by personal delivery to the Tenants. The Effective Vacancy date on the Notice was October 7, 2013. The Tenants are living in the unit and the Landlord requested an Order of Possession if the Tenants' application is unsuccessful.

The Landlord continued to say that the Tenants have unpaid rent of \$500.00 for each month of June, July, August and September, 2013 and unpaid utilities in the amount of \$548.00.

The Tenant said there is unpaid rent and utilities, but the unpaid rent is only \$1,500.00 and the unpaid utility amount on the 10 Day Notice to End Tenancy is incorrect. The Tenant said he would like to continue the tenancy and maintain the rent and utilities as it is now and then pay the unpaid rent and utilities in the future when the Tenants have the money to do so.

The Landlord said the unpaid rent is too high now and there are things to repair in the rental unit, so he requests the rent to be paid in full. The Landlord said he does not want to continue the tenancy.

Analysis

Section 26(1) says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenants do not have the right to withhold all or a portion of the rent from the Landlord when it is due therefore; as the Tenant said there is unpaid rent and utilities; I find the Tenants have not established grounds to be granted an order to cancel the Notice to End Tenancy. The Landlord's 10 Day Notice to End Tenancy dated September 27, 2013 stands in effect and consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect December 1, 2013 at 1:00 p.m.

As the Tenants have not been successful in this matter I order the Tenants to bear the cost of the filing fee of \$50.00 that they have already paid.

Conclusion

The Tenants' application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective December 1, 2013 has been issued to the Landlord. A copy of the Order must be served on the Tenants in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

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: November 12, 2013

Residential Tenancy Branch

