



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, OPB, MND, FF, ET, O

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord requested an Order of possession for breach of a material term of the tenancy and cause; compensation for damage to the rental unit, an early end of the tenancy and to recover the filing fee from the tenants.

Each party was affirmed.

Preliminary Matters

The tenants confirmed receipt of the landlord's application and brief evidence submission. In that evidence submission the tenants found a 1 month Notice to end tenancy for cause that had been issued on October 4, 2013; the date the landlord made the application for dispute resolution.

The landlord confirmed that when she made her application at a Service BC office she completed the October 4, 2013 1 month Notice to end tenancy and served it to the tenants as part of her application for dispute resolution.

The landlord made a claim in the sum of \$1,200.00 for damage to the rental unit. The landlord said that she did not in fact have a claim for damage to the unit. The landlord said that she did have a claim for rent, as the tenant's had additional occupants in the home. The landlord confirmed that she had not set out a claim for loss of rent revenue.

The tenant's testified that there is currently a hearing that is on-going as the result of a September 13, 2013 decision in which, among other findings, a previous Notice ending tenancy had been cancelled. The landlord confirmed that she applied for review of that decision and that a review hearing has now been scheduled. The landlord said she has not yet served each tenant with notice of the review hearing.

The tenant's asked if they could proceed today with a request for compensation as the landlord has been warned not to issue spurious Notices to end tenancy. The parties were informed that a matter can be heard when a party submits an application, serves the application to the respondent; allowing each party to make evidence submissions in accordance with the Rules of Procedure.

I provided general information to the parties on service of Notices of hearing and the Rules of Procedure which set out service deadlines and digital evidence requirements. I reminded that parties that evidence is not transferred between files; the tenants had

supplied one hundred and sixteen pages of evidence and a digital evidence submission for this hearing.

The landlord did not intend to proceed with an early end to the tenancy.

Analysis

As the landlord failed to issue and serve a Notice ending tenancy prior to the time she submitted her application, I find, pursuant to section 62(3) of the Act, that the application requesting an Order of possession, made on October 4, 2013 was premature. Service of a Notice to end tenancy, as part of an evidence package, does not provide a tenant the right to properly dispute a Notice. The process the landlord has used in an attempt to end this tenancy, by serving a Notice ending tenancy as evidence, when accompanied by an application requesting an Order of possession based on that Notice denies the tenants a fair process and fails to meet the standard of natural justice.

The landlord is required to serve the tenants with a Notice to end tenancy, as required by the legislation, which allows the tenants to either accept the Notice or to dispute the Notice. I note that the decision issued on September 13, 2013 warned the landlord that she must “refrain from serving spurious notices.” This was pointed out to the landlord during the hearing.

Therefore, I find that the Notice ending tenancy issued on October 4, 2013 is of no force and effect as it was not properly given to the tenants in advance of the landlord’s application for dispute resolution.

The claim for compensation is dismissed as the landlord confirmed she did not have a claim for damage to the rental unit.

Conclusion

The landlord’s application is dismissed.

The Notice ending tenancy issued on October 4, 2013 is cancelled and of no force and effect.

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 14, 2013

Residential Tenancy Branch

