



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FATHER DELESTRE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

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

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on January 29, 2014. The Landlord confirmed the receipt of the Tenant’s hearing package. 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. Is the Tenant 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. The Tenant said rent is \$257.00 and the Landlord said rent is \$595.00 per month payable on the 1st day of each month. The contradictory evidence on rent is a result of how the subsidy calculation is done for the tenancy. The Tenant paid a security deposit of \$441.00 at the start of the tenancy.

The Landlord said he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated January 24, 2014. He served the Notice on January 24, 2014 at 2:01 p.m. by posting it on the door of the Tenant’s rental unit. The Tenant said she received the 10 Day Notice to End Tenancy for unpaid rent. The Effective Vacancy date on the Notice is February 6, 2014. The Tenant is living in the unit and the Landlord requested an Order of Possession if the Tenant’s application is unsuccessful.

The Landlord continued to say that the Tenant has unpaid rent of \$\$395.00 for December, 2013, \$281.00 of unpaid rent for January, 2014, \$525.00 of unpaid rent for February, 2014 and \$428.00 of unpaid rent for March, 2014. The Landlord said the

unpaid rent is based on the rent amount of \$595.00 for December and January and \$595.00 plus \$140.00 for additional persons in the unit for February and March, 2014.

The Tenant's Advocate said the Tenant has paid the rent of \$257.00 that was recalculated for her. The calculation form indicates the new rent is to be effective for January 1, 2014. The Advocate said the Tenant paid \$200.00 on December 9, 2013, \$57.00 on December 20, 2013 and then the Tenant paid \$257.00 on December 30, 2013 for the January, 2014 rent. The Tenant's Advocate said the Tenant paid the amount of rent that she was told to pay. The Tenant said she it is unclear if there is unpaid rent or not, but she thinks she has paid her rent in full.

The Landlord said he spoke with the Tenant in the first week in January, 2014 and told the Tenant the rent calculation was not correct and her rent would have to be recalculated. The Landlord followed this with a letter dated January 31, 2014 stating the Application for Subsidy form was not valid and the rent would stay at \$595.00 for December, 2013 and January, 2014. This is the amount of rent the Tenant was paying prior to December, 2013. In addition the letter indicated a calculation for an additional persons in the unit would have to be done as a male was living in the unit since December, 2013. The letter says the minimum charge for an additional person would be \$140.00. Further the letter says the rent payments the Tenant has made are for "use and occupancy only" and will not result in a reinstatement of the tenancy agreement.

The Tenant said that since the Landlord was not going to reinstatement the tenancy she saw no benefit in meeting with the Landlord to recalculate the rent amount. The Tenant said there may or may not be unpaid rent depending on how you look at it.

The Landlord said there is \$1,515.00 in unpaid rent and they would like to end the Tenancy as soon as possible.

The Tenant's Advocate asked the Landlord if they would be agreeable to end the tenancy on March 31, 2014 if the Tenant is unsuccessful in cancelling the Notice to end Tenancy. The Landlord agreed that March 31, 2014 would be acceptable with him.

In closing the Tenant and Tenant's Advocate said the Tenant has been a good tenant and has mostly paid the rent on time and communicated with the Landlord about extra people in the unit and other issues.

The Landlord said in closing that they have tried to work with the Tenant but there has been communication issues between them throughout the tenancy. As a result of unpaid rent and the communication issues the Landlord said they want to end the Tenancy and if the Tenant is unsuccessful in cancelling the Notice to End Tenancy the Landlord is requesting an Order of Possession for March 31, 2014.

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.

On review of the subsidy calculation form it says that the new rent is effective from 01-01-14, which means the rent for December was still at the \$595.00 level. Since the Tenant paid a total of \$257.00 for the December, 2013 rent there is unpaid rent for December, 2013. As well I accept the Landlord's testimony that the Tenant was told in the first week of January that the rent calculation at \$257.00 was incorrect and had to be redone. Consequently, I find the Tenant has unpaid rent for December, 2013 and for January, 2014. The Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due therefore; I find the Tenant has 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 January 24, 2014 stands in effect. Further, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect March 31, 2014 at 1:00 p.m.

Conclusion

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

An Order of Possession effective March 31, 2014, at 1:00 p.m. has been issued to the Landlord. A copy of the Order must be served on the Tenant 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: March 17, 2014

Residential Tenancy Branch

