



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, PSF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant to: cancel a notice to end tenancy for cause; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; for the Landlord to comply with the Act, regulation or tenancy agreement; and for the Landlord to provide services or facilities agreed upon but not provided.

The Tenant and Landlord appeared for the hearing and both parties provided affirmed testimony during the hearing. The only written evidence provided by the parties was the notice to end tenancy which was provided by the Tenant.

No issues in relation to the service of the Notice of Hearing documents in accordance with Act were raised by any of the parties. The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence and to cross-examine the other party and make submissions to me.

Background and Evidence

The Landlord testified that this tenancy started on December 1, 2013. No written tenancy agreement was completed by the parties but the Landlord testified that rent was payable by the Tenant on the first day of each month in the amount of \$600.00. This payment took the form of a cheque in the amount of \$400.00 from a third party government agency which was provided to the Tenant who was then responsible to give it to the Landlord; the Tenant was then responsible for her portion in the amount of \$200.00. The Landlord testified that the Tenant paid \$300.00 as a security deposit at the start of the tenancy.

The Landlord testified that the Tenant had only paid \$300.00 towards rent for the month of January, 2014 and the Tenant asked if the security deposit could be used as payment for the other remaining \$300.00 which the Landlord refused. The Landlord testified that the Tenant failed to pay any rent for the months of February and March, 2014.

As a result, the Landlord personally served the Tenant with a 1 Month Notice to End Tenancy for Cause (the "Notice") on March 4, 2014 because the Tenant is repeatedly late paying rent. The Notice shows an effective end of tenancy date as March 13, 2014. The Landlord made a submission about whether a tenancy had been created for the basement area but also made a verbal request for an Order of Possession for the basement suite.

The Tenant disputed all of the evidence provided by the Landlord, referring to it as "crap". The Tenant testified that she only paid \$200.00 as a security deposit for the rental of the basement suite and that the government provide her with cheques which are mailed to her and she would then pay the Landlord the extra amount for a total rent of \$600.00.

The Tenant confirmed receipt of the Notice on March 4, 2014. In relation to the unpaid rent amounts testified to by the Landlord, the Tenant testified that the Landlord refused to pick up the rent cheques from her unit and when she tried to pay him the rent the Landlord refused to accept the money or the rent cheques. The Tenant explained that the Landlord told her to leave the rental suite but she explained that he needed to give her a proper eviction notice to do so.

The Tenant testified that the Landlord had rented her the basement suite which included all the utilities. The Tenant testified that the Landlord had cut off the power to the rental suite during January, 2014 and they had remained off for three days. As a result, the Tenant testified that she had to put the utilities in her name and now requests that the Landlord put the utilities back into his name and pay the outstanding amount of the utilities, although the Tenant was unable to verify the amount of utilities that were outstanding.

The Tenant testified that during the power shut off, she lost \$150.00 worth of food in her refrigerator which she now claims from the Landlord.

The Landlord stated that at the start of the tenancy the agreement was for the Tenant to pay 50% of the utilities and because she failed to pay her portion of the utilities, the power was shut off. The Landlord also explained that when he went to the Tenant's

rental suite to get the rent, the Tenant refused to give it to him, citing the fact that he had to give her 24 hours notice to come into the suite.

Analysis

Both parties in this case were reliant on their verbal testimony as evidence for the hearing. Based on the foregoing, I have considered the evidence of both parties and I have based my decision on a balance of probabilities.

Section 26 of the Act requires a Tenant to pay rent on the day that it is due. The definitions of the Act also allows for a tenancy agreement to be established through an oral agreement for the possession of a rental unit. In this case, I find that the Landlord and Tenant established a tenancy for the basement suite and the Tenant was responsible for paying rent to the Landlord in the amount of \$600.00 on the first day of each month.

I also find that the contents of the Notice and the manner in which it was served to the Tenant complied with the Act. I find that the Tenant disputed the Notice within the 10 day time limit afforded under Section 47(4) of the Act. Section 47(2) of the Act requires that a Notice under this section is effective on a date that must consist of one full rental month of notice. Therefore, as the Notice was served to the Tenant on March 4, 2014, the effective date of vacancy on the Notice is corrected to April 30, 2014 pursuant to Section 53 of the Act.

Policy Guideline 38 to the Act states, in part:

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent. Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late.

In this case, I find that the Tenant’s explanation for not paying rent is not sufficient. I find that the Tenant has put the blame on the Landlord for not picking up the monies for the rent and I find that Tenant has provided insufficient evidence to support the fact that the Landlord refused the rent payments.

As I have found that the Tenant has not paid full rent on the three occasions testified to by the Landlord, I find that the Notice is valid and should not be cancelled.

Section 55(1) of the Act states that if a Tenant makes an Application to dispute a Notice and the Notice is upheld, the arbitrator must grant an Order of Possession if the Landlord makes an oral request during the hearing. As the Landlord made an oral request, I grant the Landlord an Order of Possession.

The Tenant failed to provide sufficient evidence that the Landlord was responsible for the loss of her food items through the shutting off of the power to the rental suite and there is also insufficient evidence to verify the Tenant's loss for the food items that the Tenant claims perished. Therefore, I dismiss the Tenant's Application for monetary compensation for the food items.

As the tenancy has been ended in accordance with the Act, the Tenant's remaining claims are now moot as the tenancy is ending and as a result are dismissed accordingly.

Conclusion

I find the Tenant has been repeatedly late paying rent and that the one month Notice to End Tenancy is valid and should not be cancelled. The remainder of the Tenant's Application is dismissed without leave to re-apply.

The Landlord is entitled to an Order of Possession, effective at **1:00 p.m. on April 30, 2014**. The Tenant must be served with a copy of the order and this may be enforced through the Supreme Court of British Columbia if the Tenant fails to vacate the rental suite on this date and time.

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: April 29, 2014

Residential Tenancy Branch

