



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, MNDC, MNSD, SS, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy; to cancel a notice to end tenancy; to an order allowing substituted service; and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord. The tenant had arranged for a witness who was available but not called to provide testimony.

As the landlord attended the hearing and I accept that he received the required hearing documents I find that the issue of substitute service is moot and I amend the tenant's Application to exclude the matter of substitute service.

From the submitted documents the tenant acknowledges receipt of the 10 Day Notice to End Tenancy for Unpaid Rent on May 5, 2014 (the date the Notice was issued). I note that the tenant submitted her Application for Dispute Resolution on May 7, 2014, 2 days after receipt of Notice. As the 10 Day Notice allowed the tenant 5 days to submit her Application I find the issue of more time is also moot and I amend her Application to exclude this matter.

Residential Tenancy Branch Rule of Procedure 2.3 states that an Arbitrator may dismiss unrelated disputes that are contained in a single application. As the tenant has applied to cancel a notice to end tenancy for the non-payment of rent and monetary orders for issues unrelated to the payment of rent, I find that the monetary orders sought by the tenant are unrelated to the issue of the notice to end tenancy.

In addition, I find that as the tenant still retains possession of the rental unit and her personal possessions are still in the unit, the primary issue that needs to be addressed is whether or not the tenancy should continue. As such, I dismiss the portion of the tenant's Application seeking monetary orders for compensation, with leave to reapply at a future date.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in her Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant provided into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on January 23, 2014 for a 1 year fixed term tenancy beginning on February 1, 2014 for the monthly rent of \$700.00 due on the 1st of each month with a security deposit of \$350.00 paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated May 5, 2014 with an effective vacancy date of May 5, 2014 due to \$700.00 unpaid rent; and
- A copy of a “Do Not Occupy Order” issued by the regional district dated May 1, 2014 stating: “All persons shall cease occupancy immediately and shall refrain from further occupancy of the building or structure located at the “Address of Project” show below and to which this order is affixed.” The address provided on the Order is that of the residential property.

The parties agree that on May 1, 2014 the regional district did affix the “Do Not Occupy Order” to the rental unit. The landlord submits that he was informed first by the upstairs tenant and then by this tenant on May 1, 2014 that the Order was affixed.

The tenant submits that since then she has not been staying at the unit and that she has not moved her belongings out because she does not have the money to do so. She later testified that she had been informed by the regional district that she was not even allowed to enter the unit or she might be fined.

The landlord confirms that he has contacted the regional district and he needs to ensure that the unit meets all relevant code requirements; once this is complete he needs to obtain a permit confirming compliance. He states that he has not entered the unit nor does he intend to until the tenancy is over because of other issues between the tenant and himself.

Analysis

When parties enter into a tenancy agreement each has certain rights and obligations that are outlined in the *Act*, regulation and tenancy agreement. The most primary obligation of the tenant is to pay rent when it is due according to the agreement and the most primary obligation of the landlord is to provide a rental unit that complies with the requirements of Section 32(1) of the *Act*.

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

As a result of the issuance of the no occupancy order issued by the regional district, I find the landlord was not able to fulfil his obligations under Section 32(1) as of May 1, 2014. As the landlord was not able to fulfil his obligations under Section 32(1) and has not taken any action toward correcting this situation to date, I find the tenant was not obligated to provide a payment of rent on May 1, 2014.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

As I have found that no rent would have been due to the landlord on May 1, 2014 I find the landlord was not entitled to issue a notice to end tenancy for unpaid rent. Therefore I find the 10 Day Notice to End Tenancy for Unpaid Rent issued on May 5, 2014 is not effective.

Conclusion

Based on the above, I cancel the 10 Day Notice to End Tenancy for Unpaid Rent issued on May 5, 2014.

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: June 26, 2014

Residential Tenancy Branch

