



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services
and [tenant name suppressed to protect privacy]

INTERIM DECISION

Dispute Codes:

Landlord's application: OPR; MNR; MNDC; MNSD; FF

Tenant's application: MT; CNR; OLC

Introduction

This Hearing was scheduled to hear cross applications. The Tenant seeks more time to file an application to cancel a Notice to End Tenancy; to cancel the Notice to End Tenancy for Unpaid Rent issued April 25, 2014 (the "Notice"); and for an Order that the Landlord comply with the Act regulation or tenancy agreement.

The Landlord seeks an Order of Possession; a Monetary Order for unpaid rent; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit towards partial satisfaction of his monetary claim; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed evidence at the Hearing.

Preliminary Matter

The Tenant has applied to be allowed more time to file her application to cancel the Notice. The Landlord's agent testified that the Notice was sent by registered mail to the Tenant on April 25, 2014. The Landlord provided a copy of the registered mail receipt and tracking numbers in evidence. The Tenant testified that she did not receive the Notice until May 5, 2014. A search of the Canada Post tracking system confirms that the Tenant signed for the registered mail on May 5, 2014.

The Tenant filed her application to cancel the Notice on May 9, 2014, which is within the time frame allowed by Section 46 of the Act. Therefore, I find that her application for more time is not necessary and it is dismissed.

The Tenant testified that she served the Landlord with her Notice of Hearing package on May 13, 2014, by registered mail. She could not locate the receipt to confirm the tracking information, but the Landlord confirmed that he received it sometime in May, 2014.

The Landlord testified that he served the Tenant with his Notice of Hearing package on May 17, 2014, by registered mail. He stated that the documents were returned to him, unclaimed. The Landlord provided a receipt for the registered documents in evidence. A search of the Canada Post Tracking system indicates that the documents were mailed on May 17, 2014; that attempted delivery was made and a notice card left for the Tenant on May 22, 2014; that on May 28, 2014, a final notice card was given indicating that the documents would be returned to sender if not collected within 10 days; and that the documents were returned and were enroute to the Landlord on June 10, 2014.

The Tenant was adamant that she did not receive either of the notices from Canada Post telling her that she had registered mail and where to pick it up. She stated that there were problems with Canada Post in her location. The Tenant stated that she had filed a monetary claim which has been set to be heard on August 14, 2014.

Under the circumstances and in the interest of natural justice, I told the parties that I **adjourn the Landlord's application to August 14, 2014, at 9:00 a.m., to be heard at the same time as the Tenant's monetary claim.** I ordered the Landlord to re-serve the Tenant with a copy of his Application for Dispute Resolution and all of the documentary evidence he provided to the Residential Tenancy Branch. The Landlord's agent asked that the Landlord be allowed to serve the Tenant by e-mail rather than registered mail. The Landlord stated that the parties regularly e-mail each other with respect to tenancy issues. The Tenant provided her current e-mail address during the Hearing, which the Landlord confirmed was the address that he had.

I ORDER that the Landlord re-serve the Tenant with a copy of his Application for Dispute Resolution filed May 12, 2014, along with copies of his documentary evidence, by e-mail to the address provided by the Tenant. I ORDER that the Landlord do this within 5 days of receipt of this Interim Decision.

The Hearing continued with respect to the Tenant's application only.

Issue(s) to be Decided

- Should the Notice be cancelled?
- Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement?

Background and Evidence

Monthly rent is \$1,250.00, due on the first day of each month.

The Landlord testified that the Tenant did not pay rent when it was due on April 1, 2014.

The Landlord issued the Notice on April 25, 2014. It has already been determined in the "Preliminary Matter" section of this Interim Decision that the Tenant received the Notice on May 5, 2014.

The Landlord testified that the Tenant has not paid the outstanding rent for April, 2014, and that the Tenant did not pay any rent for May, 2014. The Landlord testified that he has also lost revenue for the months of June and July, 2014.

The Tenant testified that she has paid all rent due. She stated that prior to April, 2014, she used to pay her rent by depositing it into the Landlord's bank account. She stated that she had to take a ferry to and from the place where the Landlord's bank was and that she was very ill in April and unable to travel. The Tenant stated that she gave a friend cheques for April and May rent to mail to the Landlord. The Tenant stated that she believed her friend mailed the cheques on April 7 or 8, 2014. The Tenant stated that her friend was unable to testify because she was away.

The Tenant testified that she also sent three post dated cheques for June, July and August, 2014, by registered mail to the Landlord. The Tenant provided the tracking numbers for the registered mail.

The Landlord denied receiving any cheques from the Tenant for rent. He testified that he received registered mail from the Tenant on April 22, 2014, but that it contained her Notice of Hearing documents for her monetary claim. He stated that no cheques were enclosed with the Tenant's Notice of Hearing documents.

The Landlord's agent asked for an Order of Possession.

Analysis

Rent must be paid when it is due. Section 46 of the Act provides that a Landlord may end a tenancy for unpaid rent. Within 5 days of receipt of a notice under Section 46, a tenant has 5 days to pay the rent or dispute the notice.

I find that the Tenant provided insufficient evidence that April's rent has been paid. The Tenant provided a duplicate copy of her April rent cheque in evidence; however, I find that the Tenant did not provide sufficient evidence that the cheque for April rent was mailed to the Landlord on April 7 or 8, 2014, or at all. The Tenant provided no evidence that the April cheque was cashed by the Landlord.

Therefore, **I dismiss the Tenant's application to cancel the Notice.** I find that it is a valid notice to end the tenancy.

During the Hearing, the Landlord's agent asked for an Order of Possession. Section 55(1) of the Act provides:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

Pursuant to the provisions of Section 55 of the Act, I hereby provide the Landlord with an Order of Possession.

The Tenant seeks an Order that the Landlord comply with the Act, regulation or tenancy agreement; however the tenancy is over and therefore this portion of her application is dismissed.

Conclusion

The Tenant's application is **dismissed** in its entirety.

The Landlord's application is **adjourned, to be heard at the same time as the Tenant's monetary claim on August 14, 2014, at 9:00 a.m.** The parties were provided with the sign-in information at the Hearing, and the Residential Tenancy Branch will send out Notices of Reconvened Hearing with respect to the Landlord's application. It is not necessary for the Landlord to serve the Tenant with the Notice of Reconvened Hearing.

I ORDER that the Landlord re-serve the Tenant with a copy of his Application for Dispute Resolution filed May 12, 2014, along with copies of his documentary evidence, by e-mail to the address provided by the Tenant. I ORDER that the Landlord do this within 5 days of receipt of this Interim Decision.

Pursuant to the provisions of Section 55 of the Act, I hereby provide the Landlord with an Order of Possession for service upon the Tenant. This Order must be served in accordance with the provisions of Section 88 of the Act. This Order may

be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I ORDER that the Landlord provide the Tenant with a copy of this Interim Decision when serving her with the Order of Possession.

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: July 03, 2014

Residential Tenancy Branch

