



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNQ, MNR, MT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed a claim for an order of possession based on unpaid rent, and requested monetary orders for unpaid rent and to recover the filing fee for the Application.

The Tenant's Application is seeking an order to cancel a Two Month Notice to End Tenancy and for more time to make the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Should the Tenant have more time to file an Application to Dispute a Notice?

Should the Two Month Notice to End Tenancy be cancelled?

Background and Evidence

The Agent for the Landlord testified that the Tenant failed to pay all the rent due on May 1, 2014. The Agent served the Tenant with a 10 day Notice to End Tenancy for unpaid

rent of \$219.00, on May 2, 2014. The Tenant was served the Agent placing the Notice in her mailbox.

Pursuant to section 88 (f) of the Act, the Landlord is allowed to serve documents to the Tenant by placing them in her mailbox.

Pursuant to section 90 (d), documents placed in a mailbox are deemed served on the third day after being left.

I find the Tenant was deemed served with the 10 day Notice to End Tenancy on May 5, 2015.

The Tenant testified she did not recall when she got this Notice, although she testified that she thought the Landlord could not serve her by putting documents in the mailbox, as she had to serve the Landlord personally. She testified that she did not dispute the 10 day Notice to End Tenancy because she told the Landlord she would be paying the rent soon. The Tenant thought she had paid the rent owed on May 20th or 24th, 2014.

The Agent for the Landlord testified the Tenant paid the rent on May 20th, 2014.

The Agent further testified the Tenant failed to pay any rent for June or July of 2014. The Tenant agreed she had paid no rent for June or July, but because she did not agree to the amount owed.

The Agent for the Landlord also testified that the Landlord had issued the Tenant further notices to end tenancy, one for repeated late payment of rent and a two month notice.

The Tenant testified that she thought everything was okay with the Landlord after she paid the rent on May 20th, 2014. She agreed that the Landlord had issued her further notices to end tenancy after this and that the Agent for the Landlord did not tell her the tenancy would now continue because she paid the May rent.

The Tenant had been disputing the two month Notice to End Tenancy because the Landlord wanted to charge her more rent for her boyfriend living in the subsidised housing. The Tenant denies her boyfriend is living with her.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant did not pay the rent or dispute the 10 day Notice to End Tenancy within the statutory time limit of five days, and therefore, the 10 day Notice to End Tenancy is valid and the tenancy has ended.

Under section 26 of the Act, the Tenant could not withhold rent unless she had an order from the Residential Tenancy Branch allowing her to do so, or, if the Tenant had paid for emergency repairs in accordance with section 33 of the Act. I find the Tenant had no order, nor did she have any evidence she had paid for emergency repairs. This leads me to find the Tenant had no authority under the Act to withhold rent from the Landlord.

As found above, the Tenant was deemed served with the 10 day Notice on May 5, 2014.

The 10 day Notice to End Tenancy explains in writing that the Tenant that the Notice would be cancelled if the rent was paid within five days of the date of service. The Tenant did not pay rent until 15 days after the date of service.

The Notice also explains in writing that the Tenant had five days to dispute the Notice. The Tenant did not apply to cancel the 10 day Notice for unpaid rent; rather she applied to dispute a different Notice to End Tenancy as described above.

Section 46 of the Act includes a conclusive presumption that the if the Tenant does not pay the rent or file an Application to dispute the Notice for unpaid rent within the five days, that the Tenant has accepted the tenancy ends on the effective date of the Notice and must vacate the rental unit on the effective date.

46(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

46(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

[Reproduced as written.]

For the above reasons, I find this tenancy ended on May 18, 2014, the effective date, as corrected by the deemed service provisions. I find the Landlord did not reinstate the tenancy, and in fact, it was apparent the Landlord continued to want this tenancy to end.

The Agent for the Landlord agreed to an order of vacant possession for the rental unit to be effective at **1:00 p.m. July 28, 2014**. This order must be served on the Tenant and may be enforced through the Supreme Court of British Columbia.

As the May rent has been paid, the Landlord is not entitled to rent for May, but has leave to apply for a monetary order for June and July rent. I grant the Landlord a monetary order for \$50.00 for the filing fee for the Application.

As the tenancy has ended as described above, the Application of the Tenant to cancel any other Notices is moot, and therefore, I dismiss the Application of the Tenant without leave to reapply. The tenancy has ended and the Tenant must vacate peacefully.

Conclusion

The tenancy has ended under section 46 of the Act, as the Tenant did not dispute the 10 day Notice to End Tenancy, or pay the rent, before the five day time limit under the Act.

The Landlord's Application for Dispute Resolution is allowed, an order of possession is granted, effective on **July 28, 2014, at 1:00 p.m.** The Landlord is granted a monetary order for the filing fee for the Application.

The Tenant's Application is dismissed as the tenancy ended in May, as described above, and the other Notices were therefore, moot.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 10, 2014

Residential Tenancy Branch

