Dispute Resolution Services

Residential Tenancy Branch Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD, FF, CNC

Introduction

There are applications filed by both parties. The landlord seeks an order of possession as a result of a notice to end tenancy issued for cause, a monetary order for unpaid rent or utilities, to keep all or part of the security deposit and recovery of the filing fee. The tenant seeks an order to cancel a notice to end tenancy issued for cause.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package submitted by the other party, I am satisfied that both parties have been properly served. The tenant has acknowledged that no documentary evidence was submitted and has confirmed receiving the landlord's documentary evidence by Canada Post Registered Mail on August 20, 2014. The tenant seeks an adjournment as he states that he has not had sufficient time to review and respond to the landlord's documentary evidence. The landlord clarified that the documentary evidence was sent on August 8, 2014 and that attempts at service was made leaving notices until the tenant picked up the package at the post office on August 20, 2014. The landlord states that according to the rules of procedure on service of documents by Registered Mail, the tenant is deemed to have received it 5 days later from when it was sent on August 13, 2014. The tenant states that he has not been able to properly review the documentary material and properly respond to it since August 20, 2014 for the last 8 days before the hearing. The tenant was asked what material he would likely obtain in responding. The tenant did not provide any details and repeated his request for an adjournment. I find that the tenant's request for an adjournment is highly prejudicial to the landlord and is without merit as the tenant cannot provide any details of what if any evidence could be gathered to respond to the application of the landlord. The tenant's application is denied, the hearing shall proceed.

It was also clarified with both parties that the landlord is amending her application by withdrawing the monetary claim as of the date of the hearing there are no arrears for rent.

Issue(s) to be Decided

Is the landlord entitled to an order of possession? Is the tenant entitled to an order cancelling the notice to end tenancy?

Background and Evidence

This tenancy began on March 24, 2012 on a fixed term tenancy ending on March 30, 2013 and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$1,850.00 payable on the 1st of each month and through two notice of rent increase forms served on December 23, 2012 and again on December 26, 2013 the rent was increased in accordance with the notices to \$1,960.00. A security deposit of \$925.00 was paid on March 22, 2012.

The landlord seeks an order of possession as a result of a 1 month notice to end tenancy issued for cause dated June 20, 2014. The landlord states that the tenant was served on June 24, 2014 by Canada Post Registered Mail and has submitted a copy of the Customer Receipt Tracking number as confirmation as well as a printout of an online search on the Canada Post website which shows that the tenant signed and received the package. The notice provides for 2 reasons for cause: 1) Tenant is repeatedly late paying rent. 2) Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The notice displays an effective end of tenancy date of July 31, 2014. The tenant has applied to dispute the notice stating, "I disagree with the reasons were given!" The landlord relies on copies of 10 day notices to end tenancy issued for unpaid rent from January 2014 to May 2014 inclusive with the received envelope dates of when rent was paid on January 15, February 19, March 23, April 24, May 26, June 16 and July 15. In all cases the landlord states that rent is due on the 1st of each month as per the signed tenancy agreement and that rent was received by mail well after the allowed time frame from which the 10 day notices to end tenancy were issued. The tenant dispute this stating that the rent is available for pick up by the landlord at any time on the 1st. Both parties confirmed that post dated cheques were given to the landlord at the beginning of the

tenancy, but that the tenant refused to provide any more after the fixed term became a month to month term.

The landlord also states that the tenant upon being provided advance written notice on December 6, 2013 of a notice of entry for a dishwasher service was refused access. The landlord states that a warning letter was given to the tenant dated December 13, 2013 stating that the landlord required access to enter when the tenant was properly served with notice of entry that an eviction notice could follow. The landlord posted written notification of entry on June 5, 2014 for entry on June 20, 2014. The tenant refused access to the landlord, but allowed the technician to enter. On June 20, 2014 the landlord served the tenant with a 1 month notice to end tenancy issued for cause. The tenant confirmed in his direct testimony that he refused access to the landlord on two separate occasions after written advance notice was received.

<u>Analysis</u>

I accept the evidence of both parties and find that the landlord has established grounds for cause to end the tenancy. The landlord has provided numerous 10 day notices to end tenancy issued for unpaid rent as well as copies of envelopes of when rent was sent by regular mail with date stamps to the landlord in support of this claim. The tenant has argued that the rent was available for the landlord to pick up, but that the rent cheques were mailed to the landlord after the allowed 5 day time frame as per the notice. I also find based upon the direct testimony of the tenant that the tenant did refuse access to the landlord for entry into the rental unit after written advance notice was properly received from the landlord. The landlord is granted an order of possession. The tenant must be served with the order of possession. Should the tenant refuse to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord is entitled to recovery of the \$50.00 filing fee. The tenant's application is dismissed.

Conclusion

The landlord is granted an order of possession and a monetary claim of \$50.00

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: August 28, 2014

Residential Tenancy Branch