



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on an adult person apparently residing with the Tenant on December 23, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on December 15, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated December 23, 2014?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on July 1, 2013. The present rent is \$950 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$475 at the start of the tenancy.

Analysis

The landlord testified that the tenant has failed to pay the rent for the months of October 2014 (\$950 is owed), November 2014 (\$950 is owed), December 2014 (\$950 is owed) and January 2015 (\$950 is owed) and the sum of \$3800 is outstanding. In addition the tenants owe \$45 for unpaid rent prior to October 2014 for a total of \$3845.

The tenant acknowledges that he has not paid the rent. He testified the reason he has not paid the rent is because he has been unable to get ahold of the property manager who has not returned his phone calls. He has seen mice in the rental unit and the stove is not working. There is a strong smell of garbage and the carpet is in poor condition. There is a mechanic operating in the parking lot next door making "huge noises and disturbing his pregnant wife and nobody is responding to his phone calls.

The landlord disputes the complaints. The landlord testified they have a resident manager in place since December. The reason the tenant was not able to get ahold of the landlord is that he was telephoning the previous managers of the building. The complaints of garbage and the mechanic relate to matters the landlord has no control on.

Section 26(1) of the Residential Tenancy Act provides as follows:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Residential Tenancy Act does not permit a tenant to withhold the rent until the tenant has first obtained an order from the arbitrator to do so.

I determined the Notice to End Tenancy is valid. Even if the tenant's allegations were true the tenant does not have a legal right to withhold the rent.

Determination and Orders

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy and to recover the cost of the filing fee. I order that the tenancy shall end on the date set out in the Notice.

Order for Possession

The Residential Tenancy Act provides that where a landlord has made an oral request for an Order for Possession at a hearing where a dispute resolution officer has dismissed a tenant's application to set aside a Notice to End Tenancy, the dispute resolution officer must grant an Order for Possession. **The landlord made this request at the hearing. As a result I granted the landlord an Order for Possession on 2 days notice.**

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

The tenant represented that he could pay the arrears today. The landlord stated that if the tenant pays the full arrears in the sum of \$3845 by January 21, 2015 the landlord would reinstate the tenancy and would not rely on the Order for Possession. However, if the tenant fails to make the payment as represented the landlord would exercise its rights under the Order for 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: January 21, 2015

Residential Tenancy Branch

