



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SEBASTIANIS CONTRACTING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for unpaid rent, for the Landlord to Comply with the Act, regulation and tenancy agreement and to recover the filing fee.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on December 8, 2014. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Has the Landlord complied with the Act, regulations or tenancy agreement?

Background and Evidence

This tenancy started on November 1, 2011 as a one year fixed term tenancy and then continued on a month to month basis. Rent is \$1,400.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$700.00 in advance of the tenancy.

The Landlord said she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated December 2, 2014. She served the Notice on December 2, 2014 by posting the Notice on the door of the rental unit. The Effective Vacancy date on the Notice is December 15, 2014. The Tenant is living in the unit and the Landlord requested an Order of Possession if the Tenant's application is unsuccessful.

The Landlord continued to say that the Tenant has unpaid rent of \$425.08 for December, 2014 and \$400.00 of unpaid rent for January, 2015.

The Tenant said that he transferred the utilities into his name during the tenancy as he received a cancelation notice from the utility companies. Then in September, 2014 the Tenant was advised by the Landlord that the utilities were put into the Landlord's name and he was to pay \$1,400.00 per month which included utilities. The Tenant said he paid \$1,400.00 per month for September, October and November, 2014 and then in December he received bills from the utility companies so he deducted these amounts from the December, 2014 and January, 2015 rent amounts. The Tenant said he paid \$974.92 for December rent and \$1,000.00 in rent for January, 2015. The Tenant thought he should deduct the utility bill amounts from his rent.

The Landlord said she submitted in the evidence confirmation that the utilities were transferred September 1, 2014 to the Landlord and that the utility bills have been paid by the Landlord since September, 2014. The Landlord said the Tenant did not pay his full rent for December and January and now she wants to end the tenancy as of January 31, 2015.

The Tenant said in closing that he understands that he has unpaid rent for December and January, but this resulted from incorrect information being told to him. The Tenant asked the Landlord if they could continue the tenancy if he paid the unpaid rent.

The Landlord declined the Tenant's request and said she wants to end the tenancy on January 31, 2015.

Analysis

Section 26(1) says 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 Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due therefore; I find the Tenant has not established grounds to be granted an order to cancel the Notice to End Tenancy. The Landlord's 10 Day Notice to End Tenancy dated December 2, 2014 stands in effect. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect January 31, 2015 at 1:00 p.m.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective January 31, 2015 has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

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 07, 2015

Residential Tenancy Branch

