



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DAWSON HEIGHTS HOUSING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for unpaid rent.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on February 16, 2015. 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?

Background and Evidence

This tenancy started on August 1, 2001 as a month to month tenancy. Rent is \$695.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$175.00 in June, 2001.

The Landlord said she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated February 12, 2015. She served the Notice on February 12, 2015 by personal delivery to the Tenant. The Effective Vacancy date on the Notice is February 23, 2015. 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 \$400.00 for October 2014 and \$695.00 of unpaid rent for February, 2015.

The Tenant said she agrees that there is unpaid rent for October, 2014 of \$400.00, but the Tenant said she believes the February, 2015 rent was paid. The Tenant’s son said they have a copy of the Tenant’s bank account that shows a withdrawal of \$695.00 on February 2, 2015 that was the rent payment. The Landlord said the February, 2015 rent

payment was returned NSF on February 4, 2015. The Tenant and her son said they believe they made the February rent payment so the only unpaid rent is from October, 2014 which they are trying to pay. The Landlord said a payment arrangement was made for the October, 2014 rent but the Tenant has not been able to make the payments to bring the rent current. The Tenant said she was trying her best to make the rent payments.

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 February 12, 2015 stands in effect and 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 March 31, 2015.

Conclusion

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

An Order of Possession effective March 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: March 10, 2015

Residential Tenancy Branch

