



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent.

The Tenant submitted documents the Tenant wishes to rely upon as evidence to the Residential Tenancy Branch on February 05, 2015 and February 13, 2015. The male Tenant stated that on February 13, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord submitted an excerpt of a Residential Tenancy Branch decision regarding a previous dispute resolution proceeding on February 25, 2015. The Landlord stated that a copy of the excerpt was posted on the door of the rental unit on February 25, 2015. The Tenant stated that this evidence was not received.

The Landlord agreed to proceed with the hearing with the understanding that I did not have this evidence with me; that he could speak to the document at the hearing; and that he could request an adjournment if he subsequently determined it was necessary for me to physically view the excerpt. Legal Counsel for the Tenant stated that he is in possession of a copy of the previous decision and he does not oppose me viewing the decision prior to rendering a decision in this matter. The file number for the previous decision appears on the first page of this decision.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy is a month-to-month tenancy for which the Tenant is required to pay monthly rent of \$595.00 by the first day of each month. The parties agree that they have a written tenancy agreement that names both Tenants who attended this hearing.

The Landlord and the Tenant agree that on February 04, 2015 the Landlord personally served the male Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of February 14, 2015. The Notice declared that the Tenant had failed to pay rent of \$297.50 that was due on February 01, 2015.

The Landlord and the Tenant agree that to date this tenancy has not been ended by the Landlord. The parties agree that neither Tenant has served the Landlord with written notice to end this tenancy.

The Landlord stated that he assumes the tenancy agreement with the female Tenant has ended on the basis of information provided by the male Tenant at a previous dispute resolution proceeding held on January 07, 2015. He stated that in this hearing the male Tenant informed the Arbitrator that the female Tenant has not resided in the rental unit for many weeks and that she has moved out of the rental unit.

The male Tenant stated that on January 07, 2015 he attended a dispute resolution hearing at which time he told the Arbitrator that his mother was not living at the rental unit because the Landlord had told her she was not welcome.

In the decision from the hearing on January 07, 2015 the Arbitrator noted that the male Tenant declared:

- that the female Tenant had shattered her ankle and had surgery on December 30, 2014
- that the female Tenant is staying with a friend as she is not able to get out of bed
- that the female Tenant is looking for another place to live and that she moved out of the rental unit seven weeks prior to the hearing on January 07, 2015
- That the female Tenant took her clothes and personal effects with her but still has furniture at the rental unit
- That the female Tenant will not be returning to the rental unit
- That the female Tenant still pays half the rent.

I note that in her decision of January 07, 2015 the Arbitrator did not determine if the female Tenant was still living in the rental unit nor did she determine if the female Tenant had the right to continue living in the rental unit. The Arbitrator merely determined that this tenancy had not ended.

The female Tenant stated that she did not reside in the rental unit for a period of approximately three months as she was recovering from a broken leg. She stated that she is still residing at the rental unit and that she has never informed the Landlord that she was vacating the rental unit.

The Landlord stated that prior to February 01, 2015 he received one cheque from the Provincial Government, in the amount of \$297.50, which was a rent payment for February for the male Tenant. He stated that he applied this payment to rent for February.

The Landlord stated that prior to February 01, 2015 he received one cheque from the Provincial Government, in the amount of \$297.50, which was a rent payment for February for the female Tenant. He stated that he returned this payment to the Government as he understood the female Tenant was no longer residing in the rental unit.

The Landlord stated that prior to March 01, 2015 he received two cheques from the Provincial Government, in the amount of \$297.50 each, which were rent payments for February and March for the female Tenant. He stated that he has not cashed either cheque, although he retained possession of them.

The female Tenant stated that she has not asked the Province of British Columbia to stop paying rent to the Landlord on her behalf.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the two Tenants in attendance at this hearing entered into a written tenancy agreement, which required the Tenants to pay monthly rent of \$595.00 by the first day of each month.

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or the landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. There is no evidence that this tenancy was ended prior to February 01, 2015 on the basis of written notice served by the Landlord or the Tenant. I therefore find that the tenancy was not ended prior to February 01, 2015 pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that this was a

fixed term tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. As there is no evidence that the rental unit was vacated, I find that the tenancy did not end pursuant to section 44(1)(d) of the *Act*.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy and the evidence specifically shows that on January 07, 2015 an Arbitrator determined that the tenancy had not ended, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

Although I accept that during the hearing on January 07, 2015 the Tenant informed the Arbitrator that the female Tenant was no longer residing in the rental unit, this did not serve to end the tenancy nor does it prevent the female Tenant from living in the rental unit. The male and the female Tenants are co-tenants and are equally entitled to occupy the rental unit. Neither Tenant has the legal right to prevent the other Tenant from occupying the rental unit, although either Tenant may end the tenancy by providing proper notice to the Landlord.

On the basis of the undisputed evidence I find that the Landlord received payment for rent for February of 2015, in full, prior to February 01, 2015, although the Landlord opted to return the rent payment made on behalf of the female Tenant. Given that the tenancy had not ended; that the female Tenant did not inform the Landlord that she no longer intended to live in the unit; and the female Tenant was still legally entitled to occupy the rental unit, I find the Landlord should not have refused payment that was made on behalf of the female Tenant.

Section 46 of the *Act* authorizes a landlord to end a tenancy if rent is not paid when it is due. As the rent was paid when it was due, I find that the Landlord did not have the right to end the tenancy pursuant to section 46 of the *Act*. I therefore grant the Tenant's application to set aside the Ten Day Notice to End Tenancy that was served pursuant to section 46 of the *Act*.

Conclusion

The Ten Day Notice to End Tenancy, dated February 04, 2015, is set aside and this tenancy continues until it is ended in accordance with the *Act*.

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 05, 2015

Residential Tenancy Branch

