



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Raamco Int. Prop. Can. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the hearing, gave their solemn affirmation that they would tell the truth and were given 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.

At the hearing, the landlord stated that they did not receive the tenant's evidence, which was a photocopy of 2 duplicate cheques (carbon copies of the original cheques). The landlord had the opportunity to view the evidence at the hearing. The landlord submitted evidence at the hearing, some of which had not been submitted in advance. The evidence included 2 letters sent to the tenant advising of rent owing. Although not provided as part of the landlord's evidence package, the tenant acknowledged having received those letters on or about the dates they were created.

I accepted the late evidence of the landlord, but because it was not relevant to the matter before me, which was the question of whether rent was paid in advance of or within 5 days of the tenant's receipt of the notice to end tenancy at issue, it had no effect on my decision. I accepted the tenant's evidence as the landlords offered no objection to its acceptance and as failing to accept it would have resulted in undo prejudice to the tenant.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that the tenant is obligated to pay rent in the amount of \$1,160.00 per month in advance on the first day of each month. They further agreed that in each of the months of April and May, the tenant mistakenly paid \$100.00 less than required. They further agreed that on July 17, 2015, the landlord served the tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The Notice alleged that the tenant had failed to pay \$2,025.00 in rent. At the hearing, the landlord testified that the amount stated in the Notice was incorrect and that the tenant actually owed \$2,520.00 which represented \$1,160.00 in rent for each of the months of June and July and \$100.00 in arrears for each of the months of April and May.

The tenant testified that on June 1 and on July 1, she paid her rent in the usual manner, which was to put a personal cheque through the mail slot located in the office door. She testified that when the landlord advised that they had not received her rent, she used the same mail slot to place a note in which she offered to replace the cheques. She testified that she received no response to that offer. The tenant testified that her counsel had advised her to put a stop payment on her cheques and give the landlord a money order for the rent owing, but she believed she that the landlord would simply pretend to not have received the money order and should she pay her rent in future months, she would have to continue putting stop payments on cheques, which would result in costs which she believed unnecessary and unfair.

The landlord denied having received cheques from the tenant in June and July and testified that they did not receive an offer to replace the cheques. They testified that with the Notice, they served a letter on the tenant which outlined the amount of rent she owed. The tenant acknowledged having received that letter.

Analysis

The Notice clearly contained an error in the amount of rent the landlord alleged was owing. Section 68(1) of the Act permits me to amend a notice if I am satisfied that the person receiving the notice knew the information that was omitted and in the circumstances, it is reasonable to amend the notice. I find that the letter accompanying the Notice clearly stated the amount of rental arrears and I find that the tenant knew the exact amount which the landlord claimed she still owed. I find it reasonable in the circumstances to amend the Notice and I order it to be amended to reflect the \$2,520.00 which the landlord has alleged is owing.

Under the terms of the tenancy agreement, the tenant is obligated to pay rent. Payment of rent has, in my opinion, 2 essential elements in order to be considered a complete action. The payment must leave the hands of the payor and be received by the payee.

The tenant provided copies of the duplicate cheques which are created via carbon when she writes cheques in her chequebook. I accept that the tenant wrote the cheques in question, but I am not satisfied on the balance of probabilities that the landlord received the cheques in question. The means by which the tenant has typically paid her rent, by putting it through a mail slot in the office door, is not without some risk. Envelopes could easily be kicked aside or slip under a piece of furniture with neither the payor nor the payee being aware of it. I find that when the tenant was made aware that the landlord had not received the cheques in question, she had an obligation to ensure that payment reached the hands of the landlord in order to ensure that both elements of the payment process had been completed. I find that writing a note offering to replace the cheques was not sufficient to discharge her obligation to pay rent and in any event, the landlord denied having received such a note and the tenant did not enter a copy of that note into evidence.

Had the tenant paid cash, her reluctance to replace the money would have been understandable. However, because the cheques in question have not been negotiated, the rent money is still in the hands of the tenant so she has not even completed the first element of payment as described above. The tenant appears to be under the impression that the only means by which she may contact the landlord is by placing envelopes through the mail slot in the office door, but there is no evidence before me showing that the tenant is restricted to communicating in this fashion. I find she could have pursued any number of means to pay the landlord. She could have followed the advice of counsel and put a stop payment on the cheques, replacing them with a money order which she could have placed directly into the hands of the landlord in the presence of a witness, she could have obtained cash from her bank and paid the landlord personally, she could have sent funds through registered mail so she had a signed confirmation that the landlord had received the funds or, as both parties have retained counsel to represent them on another tenancy issue, she could have given the money to her counsel with instructions to transfer that payment to the landlord's counsel. Instead of effecting payment, the tenant chose to dispute the Notice and withhold payment, fully aware that the cheques in question have not been negotiated.

The preponderance of the evidence leads me to find that the tenant has not paid rent as is required under the Act and I find that the landlord is entitled to end the tenancy for her breach of that fundamental term of the agreement. I therefore dismiss the tenant's application.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail 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 effective date of the Notice has long since passed. Section 68(2)(a) of the Act gives me discretion to set the date for the end of the tenancy. This tenancy has lasted for 26 years and ordinarily I would be reluctant to issue an order possession effective 2 days after service given the length of the tenancy. However, the parties agreed that the tenant made no attempt to pay rent for August and September which means the landlord has been deprived of 4 months of rent as of the date of the hearing. I see no reason to extend the tenancy as I have little confidence that the tenant will voluntarily pay the rental arrears or occupational rent for October. The order of possession will be effective 2 days after service on the tenant.

Conclusion

The application is dismissed and the landlord is granted an order of 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: September 28, 2015

Residential Tenancy Branch

