



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

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 Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail on August 24, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated August 24, 2015?

Background and Evidence

The tenancy began on October 1, 2013. The tenancy agreement provided that the tenant(s) would pay rent of \$1200 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$600 at the start of the tenancy.

The rental property is to be demolished.

The landlord testified the tenant has paid the rent late on many occasions. The tenant denies this. However the tenant admits to the following:

- At one stage early in the tenancy one of her cheques was returned NSF because the government failed to put money in her account.
- The tenant failed to pay the rent for June 2015 until July 4, 2015.
- The tenant failed to pay the rent for July 2015 until July 4, 2015. The tenant withheld the rent as there was a problem with the landlord.
- The tenant failed to pay the rent for August until September 10, 2015.
- The tenant failed to pay the rent for September until September 10, 2015.
- The rent for October has not been paid.

The landlord testified the rental unit is a house which has two bedrooms. The tenant testified there are two bedrooms upstairs and two bedrooms in the basement. The landlord did not know how many people were living in the rental unit. The tenant testified there are four people living in the rental unit. The landlord is aware of the number as he signed a form with the Ministry for the third person.

Grounds for Termination:

The grounds for termination are as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];

Analysis:

I determined the landlord failed to prove that there is an unreasonable number of occupants in the rental unit. I determined that 4 occupants is not an unreasonable number. The tenant continues to live in the rental unit. The landlord failed to prove the tenant has purported to assign or sublet the rental unit. This is not a sublet or an assignment.

However based on the evidence presented by the tenant I determined the tenant has been repeatedly late paying the rent. The tenant acknowledged one NSF cheque early in the tenancy (the landlord testified there were others but failed to prove this allegation). 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 tenant acknowledged she failed to pay the rent on time for June and July. I determined this amounts to two additional late payments. In addition, the tenant failed to pay the rent on time for August (not paid until September 10, 2015). I cannot consider the late payment for September and the non-payment for October as these occurred after the date of the Notice. Based on the tenant's evidence there has been 4 late payments.

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 dated August 8, 2015. I order that the tenancy shall end.

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 an arbitrator has dismissed a tenant's application to set aside a Notice to End Tenancy, the arbitrator 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. The building is to be demolished. **I determined it was appropriate to set the effective date for the Order for Possession for October 31, 2015.**

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.

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: October 09, 2015

Residential Tenancy Branch

