



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RED DOOR HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNR, MNDC, OLC, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- an "other" remedy.

The tenant did not attend this hearing, although I waited until 0950 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The agent confirmed she had authority to act on behalf of the landlord.

The agent acknowledged receipt of the tenant's dispute resolution package. The landlord did not submit any documentary evidence in respect of the tenant's application.

At the hearing, the landlord made a request for an order of possession in the event that I find the 10 Day Notice is valid.

Related File

On 24 August 2015, an adjudicator awarded the landlord an order of possession and monetary order by way of direct request.

On 8 September 2015, an arbitrator ordered a review hearing on the basis of fraud. The tenant alleged that she attempted to pay her rent, but the landlord refused to take it. As a result the order of possession issued 24 August 2015 was vacated. The review hearing is scheduled for mid-November.

Onus on Tenant for Certain Claims

The tenant has the onus of proving on a balance of probabilities the following claims set out in her application:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- an "other" remedy.

As the tenant failed to appear and did not provide any evidence or submissions in respect of these claims, the tenant has failed to discharge her burden of proof. Accordingly, these claims are dismissed without leave to reapply.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy is one of several successive fixed-term tenancies. The latest fixed-term tenancy began 1 March 2015. The tenant's rent is geared to her income. Current monthly rent is \$474.00 and is due on the first.

On 4 August 2015, the landlord served the 10 Day Notice by posting that notice to the tenant's door. The 10 Day Notice set out an effective date of 17 August 2015. The 10

Day Notice set out that the tenant had failed to pay \$474.00 in rent that was due 1 August 2015.

The agent provided sworn and uncontested testimony that the tenant did not attempt to pay her rent for August. The agent testified that the tenant did not pay for her use and occupancy in September. The agent testified that the tenant paid for her use and occupancy of the rental unit for October. The agent testified that the landlord issued a receipt that the October payment was received for the tenant's use and occupancy only.

The agent testified that she knew of no reasons that would entitle the tenant to deduct any amount from rent.

The tenant applied for dispute resolution on 14 August 2015.

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

There is no evidence before me that indicates that the tenant was permitted to deduct any amount from rent.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

On the basis of the agent's sworn and uncontested testimony, I find that the tenant failed to pay (or attempt to pay) the outstanding rent within five days of receiving the 10 Day Notice. Thus, the tenant did not cancel the 10 Day Notice pursuant to paragraph 46(4)(a) of the Act. As the tenant failed to appear in support of her application for an extension of time, the tenant has not made application pursuant to paragraph 46(4)(b) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by 17 August 2015. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: October 23, 2015

Residential Tenancy Branch

