



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNR MNDC MNSD OLC FF

Introduction

This hearing dealt with the tenant's application to cancel two notices to end tenancy, as well as for monetary compensation and an order that the landlord comply with the Act. The tenant and the landlord participated in the teleconference hearing.

Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

I determined that the issue of the notices to end tenancy took precedence, and only heard evidence on the notices. I will address the remainder of the tenant's application in the conclusion of my decision.

Issue(s) to be Decided

Is the notice to end tenancy for unpaid rent valid?

Is the notice to end tenancy for cause valid?

If either notice is valid, is the landlord entitled to an order of possession?

Background and Evidence

On July 31, 2015 the landlord served the tenant with a notice to end tenancy for unpaid utilities and a notice to end tenancy for cause. The tenant applied to dispute both notices.

Notice to End Tenancy for Unpaid Utilities

The notice to end tenancy for unpaid utilities indicated that the tenant failed to pay \$400.00 for utilities following written demand on June 26, 2015.

The landlord stated that the tenant got behind in her bills but finally caught up with the Hydro by Christmas 2014. The landlord stated that he sent the tenant the gas bills but she did not pay them, so he re-sent the bills. The landlord stated that he gave the tenant a written demand to pay the gas bills but the tenant refused to pay and still has not paid the gas bills.

The tenant stated that in an email the landlord sent to the tenant on March 1, 2015, the landlord waived the tenant's requirement to pay \$400 for outstanding gas bills. The tenant submitted the email in her evidence, and it reads, in part: "we will waive \$400 from old gas bills." The tenant stated that the reason the landlord waived the gas bills was because he was not giving her copies of the bills in a timely manner.

The landlord stated that in addition to the email, he and the tenant had verbal discussions on March 1, 2015, and the landlord was only offering to waive \$400.00 from the gas bills if the tenant paid the balance of rent and utilities in cash on that day. The landlord stated that it was only a one-time, one-day offer because he also needed to pay his rent on March 1, 2015. The landlord stated that there was no way he gave the tenant a gift of \$400.00, because he was in a difficult spot financially and he had to declare bankruptcy on March 13, 2015.

The tenant stated that she told the landlord that she would not pay any outstanding bills until she saw them, because in December 2014 the landlord told the tenant that she owed \$1,000.00 but in fact she only owed \$300.00. The tenant denied that the landlord only made a one-day offer.

Notice to End Tenancy for Cause

The notice to end tenancy for cause indicates four causes for ending the tenancy, including repeated late payment of rent. The tenancy agreement indicates that rent is due on the first of each month.

The landlord stated that the tenant was late paying rent for February, March, June and July of 2015. In the hearing the landlord orally requested an order of possession.

The tenant acknowledged that she was late paying rent on those months, but the arrangement she had with the landlord was that she could pay one or two days late because of the timing of her paycheques.

Analysis

Notice to End Tenancy for Unpaid Utilities

I found that the notice to end tenancy for unpaid utilities was not valid. I could not be satisfied that the landlord had only made a one-day offer, as there is no reference to an offer in the landlord's email, only a calculation of the amounts due, including the one-line statement, "we will waive \$400 from old gas bills. I therefore cancelled the notice to end tenancy for unpaid utilities.

Notice to End Tenancy for Cause

I found that the notice to end tenancy for cause was valid on the ground of repeated late payment of rent. The tenancy agreement clearly indicates that rent is due on the first day of the month, and the tenant acknowledged that she paid late four times within a six-month period. The tenant had no written agreement with the landlord to alter the term of the tenancy agreement regarding payment of rent.

As I determined that the notice for cause was valid on the ground of repeated late payment of rent, it was not necessary for me to consider the other three grounds set out in the notice. In the hearing the landlord orally requested an order of possession, and I therefore grant the order of possession pursuant to the notice to end tenancy for cause.

Conclusion

I grant the landlord an order of possession effective two days from service. 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.

Because the tenant's application to cancel both notices was not successful, I decline to award the tenant recovery of the filing fee for the cost of her application. The tenant's application to recover the security deposit was premature, and I did not hear the tenant's monetary claim; therefore these portions of the application are dismissed with leave to reapply. As the tenancy ended on August 31, 2015, the effective date of the

notice to end tenancy for cause, the tenant's application for an order that the landlord comply with the Act is dismissed.

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 20, 2015

Residential Tenancy Branch

