



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's Application made September 8, 2015: OLC; RP; ERP; PSF; LRE; RR; SS; amended on September 25, 2015 to include: MT; CNR

Introduction

This Hearing was scheduled to hear the Tenant's Application for Dispute Resolution seeking an Order that the Landlords comply with the Act, regulation or tenancy agreement; Orders that the Landlords provide emergency and regular repairs to the rental unit; an Order that the Landlords provide services or facilities; an Order that the Landlords' right to enter the rental unit be suspended; a rent reduction; and an order that the Tenant be allowed to serve the Landlords in a different way than required by the Act. On September 25, 2014, the Tenant amended his application to seek an extension of time to make an application to cancel a *10 Day Notice to End Tenancy for Unpaid Rent* (the "Notice") issued September 23, 2015; and to cancel the Notice.

The Hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

The Landlords testified that they received the Tenant's initial Application and Notice of Hearing documents on September 11, 2015. The Tenant's agent testified that she also served the Landlords with the amended Application and documentary evidence by registered mail, but it was returned. She stated that she placed a copy of the Notice of Hearing package and documentary evidence in the Landlords' mail slot on October 7, 2015.

The Landlords stated that the Tenants were squatters and that the Landlords just want them out of the rental unit.

The Tenant's Application was amended to reflect the correct spellings of the Landlords' names.

Preliminary Matters

Is there a tenancy agreement between the parties?

In order to accept jurisdiction over these matters, I must first consider whether or not a tenancy exists between the parties.

The Landlords testified that there was not a tenancy agreement. They stated that they agreed that the Tenants could live in the rental unit and that for the first two months, would not pay any rent in exchange for completing repairs to the rental unit. The Landlords testified that the Tenants have been living in the rental unit for 5 months and have paid no rent.

The Tenant's agent testified that the agreement was that they would live rent free for three months, in exchange for repairs to the rental unit. She acknowledged that no rent had been paid.

The Tenant provided a copy of a "Shelter Information" form dated July 1, 2015, along with a copy of the Notice dated September 23, 2015.

Based on the evidence provided, I find that there is an oral tenancy agreement between the parties and therefore I accept jurisdiction over this matter. I make this finding for the following reasons:

- The "Shelter Information" is signed by the Landlord RR and indicates that the rental start date is July 1, 2015. It provides that rent is \$400.00 per month and that a security deposit in the amount of \$200.00 was paid by the Tenant.
- The Landlord RR issued and served the Tenant with the Notice, which is signed by the Landlord RR and provides, "This notice applies to a rental unit, *Residential Tenancy Act*, section 48".

I further find, pursuant to the Shelter Information signed by the Landlord RR, that the tenancy began on July 1, 2015, that rent is \$400.00 per month, and that the Tenant paid a security deposit in the amount of \$200.00.

Does the Tenant require an extension of time to make an application to cancel the Notice?

Section 46 of the Act requires a tenant to either pay outstanding rent in full, or make application to cancel the notice to end tenancy, within 5 days of receipt of the notice. In this case, the Notice was issued on September 23, 2015, and the Tenant made his application to cancel it on September 25, 2015. Therefore, I find that the Tenant made his application within the time limits provided by the Act, and his application for an extension is not required.

Issues to be Decided

- Should the Notice be cancelled?
- Is the Tenant entitled to the other Orders sought?

Background and Evidence

A large amount of documentary evidence was provided by the Tenants. I have recorded only the relevant evidence with respect to the Tenant's Application.

Regarding the Notice:

The Tenant agreed that no rent has been paid for July, August, or September, 2015, because they had an agreement that they would do repairs in lieu of rent for three months. The Tenant's agent stated that rent was not paid after the initial three months, because the Landlord refused to accept it when they tried to pay it on June 1, 2015 and July 1, 2015. The Tenant acknowledged that no rent has been paid for August, September, October, or November.

The Landlords stated that the agreement that the Tenant did not have to pay rent was for the first two months, only. The Landlords testified that they were given legal advice not to accept July's rent from the Tenant and that the Tenant has not attempted to pay any rent since July, 2015.

The Notice indicates that the Tenant also failed to pay utilities in the amount of \$500.00. The Tenant's agent stated that utilities were only \$409.77, and that she had paid the utilities.

Analysis

I explained to the Tenant that rent must be paid when it is due and utilities must be paid after written demand. I explained that the Notice was for unpaid rent for the month of September, and that I found that it was a valid notice to end the tenancy as no rent had been paid for September, 2015.

At this point in the Hearing, the Tenant's agent became very disruptive. She interrupted me and the Landlords. I made repeated requests for her to answer specific questions, but she would not listen to me and kept talking over me.

To restore order in the Hearing, I placed the parties on "lecture mode" so that they could hear me but I could not hear them. Due to technical difficulties with the telephone console, I was unable to remove the parties from lecture mode. However, I had already given them my decision with respect to the Notice and did not need to hear more from them with respect to that portion of the Tenant's application. I wanted to confirm the mailing addresses for the parties, but was unable to reconnect. I explained that the Decision would be mailed to them at the addresses noted in the Tenant's Application and that if they did not receive the Decision in a week, to contact the Government Agent and another copy would be sent.

I find that the Tenant did not pay any rent when it was due in September, 2015. I find that the Notice is a valid notice to end the tenancy and that the tenancy ended on October 2, 2015. I find that the Tenant is overholding.

I make no finding with respect to what month the Tenant was required to start paying rent.

Section 55(1) of the Act states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must** grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The Landlords stated that they wanted the Tenant to move out of the rental unit and I find that the Landlords made a request under Section 55 for an Order of Possession. Therefore, I grant the Landlords' request.

Regarding the Tenant's request for other Orders:

The tenancy is ended and therefore, the remainder of the Tenant's application is dismissed.

Conclusion

The Tenant's application is dismissed **without leave to re-apply**.

Both parties are entitled to make application for monetary orders, if they so desire.

The Landlords are provided with an Order of Possession effective **2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: November 17, 2015

Residential Tenancy Branch

