



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated October 6, 2015
- b. An order suspending or setting condition on the landlord's right to enter the rental unit.
- c. An order that the landlord provide services or facilities required by the tenancy agreement or law.
- d. An order for repairs.

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 10 day Notice to End Tenancy was sufficiently served on the Tenant by posting on October 6, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on October 16, 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 October 6, 2015?

Background and Evidence

The tenancy began on February 1, 2015. The oral tenancy agreement provided that the tenant(s) would pay rent of \$900 per month plus utilities payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$450 at the start of the tenancy.

Neither party produced a copy of the 10 day Notice to End Tenancy. The landlord testified that he used the government form. As of October 6, 2015 the tenant owed the sum of \$900 for

October and the utilities for September. The tenant failed to pay the rent for November. The tenant did not dispute this evidence.

The tenant testified she was withholding the rent so the landlord would make necessary repairs. 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.

Analysis:

I determined there was no basis to cancel the 10 day Notice to End Tenancy. Rent was owed at the time. The tenant did not have a legal right to withhold the rent. The tenant failed to pay the arrears within the 5 days that would void the Notice. The tenant failed to pay the rent for November. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy without leave to re-apply. I dismissed the remainder of the tenant's application without leave to re-apply as the tenancy is coming to an 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 on 2 days notice..

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: November 30, 2015

Residential Tenancy Branch

