



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HomeLife Glenayre Realty Chilliwack Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: CNR
For the landlord: OPR, MNR, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act ("Act").

The tenant applied for an order cancelling an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice") issued by the landlord.

The landlord applied for an order of possession for the rental unit pursuant to the Notice, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

The tenant and the landlord's agent attended the hearing. At the beginning of the hearing, neither party raised any issue regarding the service of the other's evidence or respective application.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the participants were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession for the rental unit pursuant to the Notice, to a monetary order for unpaid rent, and to recovery of the filing fee paid for this application?

Background and Evidence

I heard evidence that the tenant moved into this rental unit in May 2011 for a monthly rent of \$1000.00. I was not provided a copy of the original written tenancy agreement. The undisputed evidence was that current monthly rent is \$1045.00.

The evidence also was that the listed landlord here is a property management company who began representing the original owner sometime after the inception of the tenancy, and as such, the landlord's agent here and the tenant executed a new written tenancy agreement on July 16, 2012, for an effective start date of August 1, 2012, indicating that monthly rent was \$1000.00, and that, as to utilities, the landlord provided with the monthly rent only water.

It transpired that since the inception of the tenancy, the owner of the rental unit had provided hydro with the monthly rent. The residential property was sold to new owners, who terminated the hydro service by May 2015, in accordance with the latest written tenancy agreement did not include hydro with monthly rent.

As to why the original landlord had provided the hydro with the monthly rent, the original owners informed the landlord's agent here that there had been a mistake made by an employee of the original owners who had been paying the business bills.

The landlord's agent then put the tenant on notice that hydro would not be included with the monthly rent, at which time the tenant put the hydro bill in his name, at the instructions of the new owner, according to the landlord's agent. The tenant submitted a copy of the initial hydro bill.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

Landlord's application-

The landlord submitted that he served the tenant with the Notice on September 15, 2015, by attaching the document(s) to the tenant's door, listing unpaid rent of \$1045.00 as of September 1, 2015, and an effective end of tenancy date of September 28, 2015. The landlord submitted a copy of the Notice into evidence.

The Notice informed the tenant that he had 5 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice or to pay the rent in full; otherwise the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

The landlord asserted that since the issuance of the Notice, the tenant has not paid rent, owes a rent deficiency of \$3045.00, and that because of this, they are requesting an order of possession for the rental unit and a monetary order of \$3045.00 for unpaid rent through November 2015.

Tenant's response-

The tenant confirmed that he had not paid rent for September, October, or Notice 2015, but that he cannot afford to pay monthly rent along with hundreds in hydro costs, which were suddenly thrown on him to bear after 4 years into a tenancy.

The tenant submitted that monthly rent does include hydro, as it has since the beginning of the tenancy, submitting further that this was his agreement with the original landlord.

Analysis

Landlord's Application:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to pay rent by the date it is due, the landlord may serve the tenant with a Notice under section 46 of the Act.

In the case before me, although the tenant filed an application to dispute the Notice within the 5 days allowed under 46(4) of the Act, I find the landlord submitted sufficient oral and documentary evidence that the tenant owed the landlord rent when the Notice was issued, that he did not pay all of the rent owed to the landlord within five days of receiving the Notice, and did not demonstrate that he had a legal right to withhold rent.

The clear evidence is that the tenant signed the written tenancy agreement indicating that monthly rent did not include hydro costs, and that though hydro costs had previously been included, the new owner did correct the problem when made aware. Although the tenant submitted that the landlord did not give him notice of a termination

of service, I find the tenant was not provided this service in any written tenancy agreement. Additionally, when faced with this issue in May 2015, of having to pay hydro, the tenant failed to address a presumed issue through dispute resolution. Instead, the tenant chose not to pay rent at all in September, October, and November 2015.

Therefore, I find the tenancy has ended due to the tenant's failure to pay rent in accordance with the Act and the tenancy agreement and the landlord is entitled to regain possession of the rental unit.

I therefore find that the landlord is entitled to and I grant an order of possession for the rental unit effective 2 days after service of the order upon the tenant. The order of possession for the rental unit is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

I also find that the landlord submitted sufficient evidence to show that the tenant owed and failed to pay rent for September, October, and November 2015, and is therefore entitled to their monetary claim of \$3095.00, comprised of outstanding rent of \$3045.00 for September, October, and November, 2015, each, and the \$50.00 filing fee paid by the landlord for this application, pursuant to section 72(1) of the Act.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$3095.00, which is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Tenant's application:

Due to the above, the tenant's application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the Notice issued by the landlord has been supported by the landlord and as I have granted the landlord's application for an order of possession for the rental unit and a monetary order.

Conclusion

The landlord's application for an order of possession for the rental unit and a monetary order for unpaid rent has been granted.

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

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 20, 2015

Residential Tenancy Branch

