



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 365952 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes cnr, erp, rp, rr, mndc, mnrr, mnsd, opc, opr, ff

Introduction

The tenant applies for an order cancelling a 10 day Notice to End Tenancy (for unpaid rent), and other orders relating to repairs to the rental premises. The landlord applies for an Order of Possession, a Monetary Order for unpaid rent and the landlord's filing fee, and to retain the tenant's security deposit.

Both parties attended the hearing. The tenant confirmed that she had been sent the landlord's evidence package by registered mail, although she did not have it with her as she had called in from work, and had not found time to pick it up.

Issues to Be Decided

- Is the 10 day Notice to End Tenancy dated October 2, 2015 effective to end this tenancy, and entitle the landlord to an Order of Possession, or should the Notice be cancelled, and the tenancy continue?
- Is there rent money due and payable by the tenant to the landlord?
- Is it appropriate to order retention of the tenant's security deposit?
- Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

This tenancy began May 1, 2015. In the tenancy agreement, it was agreed that monthly rent was \$1,700.00 payable on the first day of each month. It was also agreed that the first month would be discounted to \$1,390.00, because certain repairs were required to the premises. A security deposit of \$850.00 was paid. Rent was paid until October, but no rent for October was paid. A 10 day notice to end tenancy was given October 2, 2015, but no further rent was ever paid.

The tenant contends that as a result of the landlord failing to make promised repairs, she was unable to find a roommate to share the rent with. She could not afford the rent on her own, and stopped paying rent.

Analysis

Section 26(1) of the Residential Tenancy Act requires that tenants must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Residential Tenancy Act or the tenancy agreement. This means the tenant was required to pay rent on the

first day of each month, even though the landlord had not have provided certain services, or made promised repairs. The tenant could have filed an application for an order for repairs, but it was not a legal option for the tenant simply to withhold or refuse to pay rent. The landlord was therefore entitled pursuant to section 46 of the Residential Tenancy Act to serve the 10 day notice ending this tenancy. Upon receipt of that notice, the tenant should have paid the rental arrears within the required 5 day period, in order to have the tenancy continue. The tenant failed to do so.

The notice is therefore found effective to end this tenancy, and the landlord has established a right to possession. The tenant's claim to have the notice cancelled is dismissed. Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective 48 hours following service upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

I accept that no rent has been paid for October, November or December. As there is a possibility that the tenant will vacated and a new tenant found by December 15, 2015, the landlord's loss of rental income is not proven beyond December 15. I therefore order that the tenant pay the sum of \$1,700.00 for October rent, \$1,700.00 for November rent, loss of rent for December of \$850.00, plus \$50.00 as recovery of the landlord's filing fee, for a total of \$4,300.00. The landlord is entitled pursuant to section 38 of the Residential Tenancy Act to retain the security deposit in partial satisfaction of this award. The landlord is at liberty to make a new application for any further losses, including further loss of rental income attributable to the tenant.

Conclusion

The tenant's claim to cancel the notice ending the tenancy is dismissed. Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective 48 hours following service upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is awarded \$4,300.00. I order, pursuant to section 38(1)(d) that the full amount of the deposit (\$850.00) be retained, in partial satisfaction of this monetary award. I further order that the remaining balance of the award due to the landlord, equalling \$3,450.00, be paid immediately by the tenant to the landlord.

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: December 04, 2015

Residential Tenancy Branch

