



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OPT

Introduction

This hearing convened pursuant to the tenant's application to cancel a notice to end tenancy for cause. The tenant, the tenant's advocate and a witness for the tenant all participated in the teleconference hearing.

The tenant and the tenant's witness provided affirmed testimony that on October 29, 2013 the tenant personally served the landlord the application for dispute resolution and notice of hearing. I accepted the tenant's evidence that the landlord was served with notice of the hearing. The landlord did not call in to the hearing.

Preliminary Issues

When a tenant applies to cancel a notice to end tenancy, the landlord must provide evidence to establish the validity of the notice. As the landlord did not appear in this hearing, despite being served with the application and notice of hearing, I accordingly cancelled the notice to end tenancy.

Under normal circumstances I would also order that the tenancy continues until such time as it ends in accordance with the Act. However, the tenant stated that on December 26, 2015 the landlord locked the tenant out of the rental unit and would not let her back in. I determined that in the circumstances it was appropriate to amend the tenant's application to consider whether the tenant is entitled to an order of possession for the rental unit.

Issue(s) to be Decided

Should the tenant be granted an order of possession for the rental unit?

Background and Evidence

The tenant stated that she moved into the rental unit in August 2015. The tenant shares a kitchen and bathroom with other occupant(s).

The tenant stated that on December 26, 2015 the toilet overflowed and another occupant called the landlord. The tenant stated that the landlord attended at the rental unit to look at the toilet. The tenant stated that on that day she had fallen and bumped her head. The tenant stated that the landlord called an ambulance for the tenant. The tenant stated that she was at the hospital for an hour and then they released her because there was nothing wrong with her. The tenant stated that when she returned to the rental unit she could not get in because the landlord had changed the locks and stated that under no circumstances would they let the tenant back in.

Analysis

I accept the tenant's testimony that she was locked out of her rental unit and could not re-enter. Section 44 of the Act sets out the ways a tenancy ends. Unless a tenant acts to end a tenancy or agree in writing to end the tenancy, the landlord may only end the tenancy by issuing an appropriate notice to end tenancy or by applying for an order to end the tenancy early. In this case, the tenant applied to cancel the notice to end tenancy and the matter had not yet been determined when the landlord changed the locks. Therefore, the landlord in this case did not take appropriate steps under the Act to end the tenancy.

I find that as the notice to end tenancy for cause has been cancelled and the landlord did not have the authority to summarily end the tenancy, the tenant is entitled to an order of possession for the rental unit.

Conclusion

The notice to end tenancy for cause dated October 27, 2015 is cancelled.

I grant the tenant an order of possession as per section 54 of the Act. The order must be served on the landlord. If the landlord does not comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

It is open to the tenant to apply for monetary compensation in regard to this matter.

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 29, 2015

Residential Tenancy Branch

