Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MUNSON ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, O

Introduction

The tenant applies to cancel a ten day Notice to End Tenancy dated and received November 6, 2015.

The tenant also applies for "other" relief not particularized in the application document. That relief was particularized in a document filed by the tenant on January 5, 2016, seven days before the hearing.

The landlord denies receiving it.

In the late filed document (Rule 3.14 of the Rules of Procedure) the tenant requests a compliance order, an order permitting her to change locks, a direction that the landlord issue rent receipts, an order regarding harassment and defamation by the landlord, and order regarding illegal entry by the landlord, a repair order and any other relief thought fair.

In light of the lateness of detail of the "other" portion of the application and in light of the landlord's position that it has not been received, I declined at hearing to consider the "other" relief claimed as it would be unfair to the respondent to require it to consider the additional claims and prepare to defend itself on such short notice. The "other" portion of the tenant's application was therefore dismissed with leave to re-apply.

Both parties attended the hearing, the corporate landlord by its representative Ms. M. and counsel, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The landlord's counsel made a verbal request for an order of possession in the event that the tenant's application to cancel the Notice is unsuccessful. Such a request is authorized by s. 55 of the *Residential Tenancy Act* (the "*RTA*").

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the ten day Notice to End Tenancy is a valid Notice? If so, is the landlord entitled to an order of possession?

Background and Evidence

The rental unit is a manufactured home located in a large manufactured home park. The dispute is governed by the *RTA* and not the *Manufactured Home Park Tenancy Act* because the landlord owns the manufactured home and rents the site that it sits on from its own landlord.

The tenancy started in December 2014. There is a written tenancy agreement showing that the rent is $1000.00 per month, due on the first of each month, in advance. The landlord does not hold any deposit money.

The Notice in question claims that the tenant failed to pay rent of $2000.00 that was due November 1, 2015. The parties agree that the $1000.00 October rent and the $1000.00 November rent had not been paid by the November 6 date of the Notice. They agree that no money has been paid since.

In light of those agreed facts, the tenant was called on first to explain why the Notice should not result in her tenancy ending.

She testifies that she is employed by the landlord in a pub establishment and that the landlord always deducted the rent from her pay. The tenant adduces several biweekly pay stubs, two of which, from July 2015, show a $500.00 deduction marked as “MSC.”

The pay stubs from September and October 2015 show no such deductions from rent.

The tenant says that the landlord stopped deduction rent from her pay and did not tell her. She says she only learned that her rent was not being paid from her pub pay on November 6, 2015, the date of an earlier residential tenancy dispute hearing (file number on cover page of this decision). That was the same day she was served with the ten day Notice.

The tenant is of the opinion that the landlord has been keeping her pay. She says she did not then and does not now have the means to pay the arrears.

The landlord’s representative Ms. M. testifies that the rent had been deducted from the tenant’s pay throughout the tenancy. She says that the tenant had been given a number of advances throughout her employment, shown on the July pay stubs as “ADV” totalling $7325.00. The landlord wanted to be repaid for the advances and so Ms. M. directed the payroll accountant to

forego the regular deduction for the tenant's rent and apply the tenant's wages against the outstanding monies owed for advances.

The pay stubs for September and October show that the tenant worked during that period but was not issued a pay cheque as she had been in July. Those pay stubs show that the regular $500.00 rent deduction from each biweekly pay period was not being made.

Ms. M. admits she did not give the tenant any advance warning or seek any agreement about the taking of pay to satisfy the outstanding advances or her ceasing to have rent paid from the tenant's wages.

The tenant denied knowledge of any advances. When her attention was drawn to the item marked as "ADV" in the amount of $7325.00 in her July pay stub, she stated that she did not know what it was.

Analysis

Ms. M.'s testimony about the money advances to the tenant is corroborated by the pay stubs submitted by the tenant. I find that the tenant had been given advances over her employment history and was indebted to her landlord.

The landlord's action in unilaterally and without notice changing the longstanding practice of deducting the tenant's rent from her pay may be open to criticism as high handed or unfair. However, the evidence satisfies me that tenant knew or should have known that her rent was no longer being taken off her pay.

In my view the tenant would have been aware by at least September (no August pay stubs were adduced). She received her biweekly pay stubs and they showed that no deduction for rent had been made. More importantly, the pay stubs were not accompanied by any pay cheque for the remainder of her earnings. The landlord was taking it all to apply against the advances.

Even had the tenant not know that her rent was no longer coming off her pay, she was informed by the service of the Notice to End Tenancy received November 6. She was responsible to pay the unpaid rent within five days after receipt of that Notice and she has not.

A residential tenancy arbitrator has no equitable jurisdiction to extend the time for payment of rent. Section 46 of the *RTA* is strict. If the rent is not paid within five days after receipt of the Notice, the tenant is "conclusively deemed" to have accepted the end of the tenant on the effective date of the Notice.

As a result I find that this tenancy ended on November 17, 2015. The landlord is entitled to an order of possession.

I make no determination about the application of s. 21 of the *Employment Standards Act*, R.S.B.C. 1996, c. 113, or whether or not the landlord was lawfully entitled to withhold the tenant's pay to satisfy a debt. That question is beyond the jurisdiction of an arbitrator acting under the *RTA*. The tenant is free to pursue that question in another forum.

If the landlord has acted wrongfully in withholding the tenant's pay and this tenancy has ended as a result, the tenant is free to pursue a claim for damages in the proper forum.

Conclusion

The tenant's application to cancel the ten day Notice to End Tenancy dated November 6, 2015 is dismissed. The remainder of her application is dismissed with leave to re-apply.

This tenancy ended November 17, 2015. The landlord will have an order of possession effective January 31, 2016.

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: January 12, 2016

Residential Tenancy Branch