



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding QUAY PACIFIC PROPERTY MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46.

Tenant JP attended this hearing. She testified that she represented the co-tenant as well, that he is currently in hospital. The landlord attended this hearing. Both parties were given an opportunity to make submissions with respect to this matter.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?
If not, is the landlord entitled to an Order of Possession for the rental unit?

Background and Evidence

This tenancy began on August 1, 2013 as a 1 year fixed term tenancy. The tenancy has continued to the date of this hearing on a month to month basis with a current rental amount of \$835.00 payable on the first of each month. The landlord testified that he continues to hold a \$417.50 security deposit paid by the tenant on August 1, 2013.

The landlord testified that the tenant has failed to pay rent in full for several months. The landlord provided testimony, undisputed by the tenant that she paid \$417.50 (half a month's rent) in the months of November 2015 and December 2015. The landlord testified that the half month of rent paid in December was not paid until December 16, 2015. The landlord testified that the tenant has paid no rent since December 16, 2015. He provided undisputed testimony that the tenant continues to reside in the rental unit.

The tenant testified that her co-tenant has been in hospital and in care for some time. She testified that, after her co-tenant went into care, she began paying only half of the rent as he was not present to pay the other half of the rent. She also testified that she is hopeful he will get out of the hospital soon and that he will begin to pay his portion of rent again. The tenant testified that she would like to make partial payments to make up for the outstanding rental amounts but that she has not made those arrangements or paid any rental arrears as of the date of this hearing.

Both parties agreed that the following rental amounts, totalling \$3340.00 are outstanding;

- November 2015 \$417.50
- December 2015 \$417.50
- January 2016 \$835.00
- February 2016 \$835.00
- March 2016 \$835.00

The landlord testified that he has tried to be patient and make payment arrangements with the tenant considering her circumstances however he is concerned with the growing amount of outstanding rent. The landlord applied for an Order of Possession for unpaid rent for the month of January 2016. The landlord testified that the tenant did not pay rent of \$835.00 due on January 1, 2016.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on January 8, 2016. The landlord testified that the tenant did not pay the outstanding rent after receiving the 10 Day Notice. At this hearing, the landlord sought a 2 day Order of Possession.

Analysis

The tenant failed to pay the January 2016 rent (or the prior outstanding rental amounts) within five days of receiving the 10 Day Notice to End Tenancy. The tenant made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. Section 26(1) of the *Act* establishes that “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.” The tenant did not have a right to deduct all or a portion of the rent.

The tenant testified that, prior to January 2016, she paid “her portion” of the rent. The landlord confirmed that, in November and December 2015, the tenant paid a half months’ rent in the amount of \$417.50. The tenant repeatedly stated that her co-tenant was not residing in the unit during those months.

Residential Tenancy Policy Guideline No. 13 addresses the rights and responsibilities of co-tenants,

Co-tenants are jointly responsible for meeting the terms of the tenancy agreement...

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

In this case, both Tenant JP and her co-tenant are both signatories to the residential tenancy agreement. As co-tenants are jointly responsible for meeting the terms of the agreement and as co-tenants are jointly and severally liable for debts to the landlord, Tenant JP is responsible to pay the entire rent on time and in accordance with section 26 of the *Act* regardless of whether her co-tenant is able to pay at that time.

The landlord has provided undisputed evidence at this hearing that the rent has been unpaid entirely since January 1, 2016 and that \$3340.00 remains outstanding for this rental unit. The 10 Day Notice to End Tenancy is valid. I dismiss the tenant’s application to cancel the Notice to End Tenancy.

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application to cancel the Notice to End Tenancy and I find that the landlord's notice to end tenancy complies with the provisions of the *Act*, I find that the landlord is entitled to an Order of Possession pursuant to section 55.

Conclusion

I dismiss the tenant's application to cancel the Notice to End Tenancy.

The landlord is provided with a formal copy of an Order of Possession effective March 31, 2016. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: March 02, 2016

Residential Tenancy Branch

