



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CLIFFORD ALLEN PONT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for unpaid rent.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on or about July 6, 2016. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on October 1, 2015 as a month to month tenancy. Rent is \$600.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$300.00 at the start of the tenancy.

The Landlord said he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated July 1, 2016. He served the Notice on July 1, 2016 by personal delivery to the Tenant. The Effective Vacancy date on the Notice is July 11, 2016. The Tenant is living in the unit and the Landlord requested an Order of Possession if the Tenant’s application is unsuccessful.

The Landlord continued to say that the Tenant has unpaid rent of \$300.00 for July, 2016 and \$300.00 of unpaid rent for August, 2016. As well, the Landlord said there are unpaid utilities of approximately \$400.0 as of today.

The Tenant said he thought he had a verbal agreement with the Landlord to use his security deposit as part of the rent for July, 2016. The Tenant said he paid \$300.00 and

the security deposit is \$300.00. As well the Tenant said because a third person moved into the unit the Tenant thought his rent was reduced to \$400.00. The Tenant said he paid \$300.00 for August so there is only \$100.00 of unpaid rent for August, 2016. The Tenant said he thought the verbal agreements he had with the Landlord covered the rent. The Tenant said he does not believe there is any unpaid rent.

The Landlord said no agreement was made about the security deposit because the Tenant has caused damage to the rental unit. As well there is no agreement about reducing the rent from \$600.00 to \$400.00.

The Landlord said in closing the Tenant has a total of \$600.00 in unpaid rent and \$400.00 in unpaid utilities.

The Tenant said in closing that if the verbal agreements were complied with there would be no issue and no unpaid rent.

Analysis

Section 26(1) says 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 does not have the right to withhold all or a portion of the rent from the Landlord when it is due therefore; I find the Tenant has unpaid rent of \$600.00; therefore the Tenant has not established grounds to be granted an order to cancel the Notice to End Tenancy. The Landlord's 10 Day Notice to End Tenancy dated July 1, 2016 stands in effect and consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of the Order on the Tenant.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in 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: August 24, 2016

Residential Tenancy Branch

