



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This was a hearing with respect to the landlord's application for an order of possession pursuant to a Notice to End Tenancy for unpaid rent. The matter began as a direct request proceeding to be determined on an ex parte basis without the requirement for an oral hearing. By interim decision dated July 27, 2016 an adjudicator decided that the landlord did not submit sufficient evidence to establish that the tenant was properly served with the Notice of Direct Request Proceeding; accordingly she ordered that the matter be reconvened to be conducted as participatory teleconference hearing. The conference call hearing was scheduled to be heard on September 16, 2016 at 9:00 A.M. The hearing did not proceed as scheduled because of a fire alarm at the offices of the Residential Tenancy Branch at the time of the hearing. The hearing was re-scheduled as a conference call hearing to be heard on October 6, 2016. I was appointed to conduct the hearing. The landlord and the tenant called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to a 10 day Notice to End Tenancy dated July 2, 2016?

Background and Evidence

The rental unit is an apartment in Penticton. The tenancy began on October 1, 2015 for a one year term and thereafter on a month to month basis. The monthly rent is \$900.00, payable on the first of each month. The landlord purchased the rental property, subject to existing tenancies in January, 2016.

The tenant did not pay rent for July when it was due. On July 3, 2016 the landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent by posting it to the door of the rental unit. The Notice was dated July 2, 2016 for \$900.00 in unpaid rent. It required the tenant to vacate the rental unit by July 16, 2016 if rent was not paid in accordance with the Notice to End Tenancy. The tenant paid the landlord \$380.00 on account of July rent on July 2, 2016. She paid a further \$520.00 on July 16, 2016. The landlord accepted the payments for "use and occupancy only" and noted that the payment does not constitute reinstatement of the tenancy agreement.

At the hearing the landlord testified that he has received additional rent payments since July, but all subsequent payments have been accepted for use and occupancy only. The landlord testified that he is not prepared to reinstate the tenancy and he requested an order of possession pursuant to the Notice to End Tenancy. The landlord said the tenant has been late paying rent on several occasions in the past and he does not want to continue the tenancy.

The tenant said at the hearing that the rent is in good standing; she requested that the tenancy be allowed to continue.

Analysis

The tenant was late paying rent for July. The landlord accepted the payments for use and occupancy only. He has not agreed to reinstate the tenancy since then and all subsequent payments have been accepted for use and occupancy only.

The tenant did not apply to dispute the Notice to End Tenancy. She did not pay the full amount of rent due within five days of receiving the Notice and the tenant is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. I find that the landlord has not agreed to reinstate the tenancy and he is therefore entitled to an order of possession as requested, to be effective October 31, 2016. This order may be filed in the Supreme Court and enforced as an order of that court. The landlord did say at the hearing that he may be willing to allow the tenant additional time to find other accommodation if the tenant requests it and If she pays rent for use and occupancy only for November.

Conclusion

The landlord's application is allowed and an order of possession has been issued effective October 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: October 17, 2016

Residential Tenancy Branch