



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR, OPT, MT, MNDC

Introduction

This hearing dealt with an application by the tenant for an Order to set aside or cancel a 10 Day Notice to End for Unpaid Rent dated October 02, 2016 and claimed received by the tenant on October 03, 2016. Both parties participated in the conference call hearing.

As the tenant's application was filed later than prescribed by the Act the tenant applied for more time to make their application received by the branch no earlier than October 20, 2016 via Service BC. I found that the effective date of the Notice as October 13, 2016 and as a result I am statute barred by Section 66(3) of the Act to extend the time limit to dispute a Notice to End beyond the effective date of the Notice. Therefore this portion of the tenant's application is dismissed. As a result the tenant's application proceeded solely on the merits of the balance of their application.

The tenant's original application also sought an Order of Possession for the tenant. The tenant subsequently filed an amendment seeking compensation for partial rent of one month as well as moving and motel costs. The landlord acknowledged receiving the tenant's application and amendment, and both parties acknowledged exchanging evidence.

Issues to be Decided

Is the tenant entitled to an Order of Possession respecting the rental unit?
Is the tenant entitled to any compensation?

Background and Evidence

The relevant evidence in this matter is as follows. The parties agreed that the tenancy is subject to a tenancy agreement. The payable monthly rent is \$800.00 each month. The parties agree the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent dated October 02, 2016 claiming the tenant owed \$400.00 rent for October 2016. The landlord testified they posted the Notice to the back door of the unit on October 02, 2016 which is undisputed as the primary entrance for the unit. The landlord testified the posted Notice was absent from where it was posted the following day. The parties agreed the tenant had paid partial rent for October 2016 in the amount of \$400.00 and that the tenant's roommate occupying the unit was tasked to pay the balance of \$400.00 during the tenant's time in treatment but had not done so by October 02, 2016. The landlord testified the tenant's roommate subsequently apparently left the unit soon after the Notice was posted on the door. The tenant claims they were made aware of the Notice to End by their roommate soon after it was posted and during their stay for treatment. The parties agree they consequently communicated as to the tenant's eminent return home from their treatment on or about October 12, 2016; however the tenant did not satisfy the unpaid rent within the 5 days permitted to do so.

It is agreed that on October 13, 2016 the tenant returned to the unit from their treatment stay and were prevented access to the unit. The landlord testified that on the same day they had changed the locks and were personally occupying the unit. The tenant claims that as a result, they had limited access to their belongings and went to a motel before then residing with a friend where they currently remain. The tenant confirmed they originally sought repossession of the rental unit however during the hearing the tenant confirmed the amendment to their application were seeking moving costs, motel costs and compensation for the return of rent paid for October 2016 in the amount of \$400.00 and did not assert they seek for the tenancy to continue. The tenant did not provide proof of moving costs or costs associated with their claimed stay in a motel.

The tenant also claims they seek all their personal property returned which the landlord assuredly testified they dealt with or disposed of in accordance with the Act. The tenant

was advised it is available to them to seek information from the Branch and possible dispute resolution in respect to their personal property.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

On preponderance of the relevant evidence in this matter I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. Despite ultimately applying to dispute the landlord's Notice to End the tenant did not pay the outstanding rent or applied to dispute the notice within the required time to do so.

I find that the tenant returned to their home from their stay for treatment on October 13, 2016 and had not vacated the rental unit. On October 13, 2016 the tenant found the landlord had changed the locked access to the rental unit, was occupying the unit and the tenant was largely being denied access to their personal property.

I find that a landlord may not take possession of a tenanted rental unit or prevent access to the unit subject to a tenancy agreement, which remains occupied by a tenant. I find that a landlord may only retake possession of a rental unit if the unit has been vacated or the landlord has valid reason or reasonable cause to determine the rental unit has been abandoned by the tenant. In this matter I have not been presented with evidence the landlord had cause to reasonably determine the tenant was not returning to their home after their stay for treatment. I find the landlord effectively unlawfully re-took possession of the rental unit without an Order of Possession and breached the tenant's right to quiet enjoyment contrary to the tenancy agreement. I accept the tenant's argument that from that event the tenant was left to find alternate living accommodations.

I find the tenant has not provided sufficient evidence to support their claim for motel costs, or moving costs. However, I find it appropriate that in the absence of the tenant seeking to reoccupy the rental unit the tenant is entitled to nominal compensation in recognition they have suffered a loss, which I set in the amount of **\$400.00**. The balance of their application is dismissed without leave to reapply.

I grant the tenant a Monetary Order under **Section 67** of the Act for the amount of **\$400.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application in relevant part is granted.

This Decision is final and binding on both parties.

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 14, 2016

Residential Tenancy Branch