

REVIEW HEARING DECISION

Dispute Codes CNR

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for unpaid rent and for a monetary claim for damage or loss.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the “hearing package”) by registered mail. Based on the evidence of the Tenant and the Landlord, I find that the Landlord was served with the Tenant's review 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?
2. Is the Tenant entitled to monetary compensation?

Background and Evidence

This tenancy started on January 1, 2015 as a fixed term tenancy for one year and then renewed on a month to month basis. Rent is \$1,286.25 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$625.00 at the start of the tenancy.

This hearing is a result of an application by the Tenant dated January 24, 2017 to cancel a 10 Day Notice for Unpaid Rent and for compensation of \$321.66 in aggravated damages due to the Landlord's actions. The original hearing was heard on February 20, 2017. The Tenant did not attend the hearing and the Landlord was issued an Order of Possession with an effective vacancy date of 2 days after service of the order on the Tenant. The Landlord said they served the Order of Possession on the Tenant on February 24, 2017. After receiving the Order of Possession the Tenant said she filed a review consideration application on February 24, 2017 and was successful in receiving a Review Hearing in a decision made on March 14, 2017. This Review Hearing is to hear the Tenant's application originally made on January 24, 2017 which is to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and for a monetary claim of \$321.66.

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At the start of the hearing both parties agreed there was and is unpaid rent. The Landlord said they received a monetary order for \$3,881.25 dated December 21, 2016, from a previous hearing on December 20, 2016 which represented unpaid rent up to that date. The Tenant said that she had received the monetary order and that she had not paid the rent or the monetary order. The Tenant continued to say that she paid the January, 2017 rent on January 4, 2017, so when she received a 10 Day Notice to End Tenancy for Unpaid Rent for January, 2017 in the amount of \$1,286.25 she thought the Landlord had made a mistake. The Tenant said she filed an application to dispute the Notice to End Tenancy. The Landlord said they applied the January, 2017 rent payment of \$1,286.25 to the outstanding rent from 2016 covered under the monetary order. The Landlord said rent is always applied to the oldest unpaid rent first so from the Landlord's perspective the January, 2017 rent was not paid. The Tenant said this was not explained to her and so she thought the January, 2017 rent was paid.

The Tenant continued to say that this problem started when the Landlord insisted that rent be paid by pre-authorized debts which the Tenant agreed to but her account was short in August, 2016 which resulted in bank charges, late fees and unpaid rent. The Tenant said the Landlord would not accept rent payments any other way. Therefore the Tenant said other rent payments have been missed. The Landlord said they accept rent payment in many forms and the Landlord pointed to the Tenants rent ledger which shows the Tenant has made rent payments by debt, by cheque and by cash. The Landlord said there is unpaid rent and the want to end the tenancy.

The Tenant continued to say she has made another application against the Landlord for a monetary claim which she hope to use to off set the monetary order the Landlord has served her. The Tenant said she has a medical issue that makes it very difficult to move so she hopes to continue the tenancy.

The Landlord said they do not want to continue the tenancy and would like the Order of Possession dated February 20, 2017 to be re-instated.

Analysis

Section 26(1) of the Act 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.

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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 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 January 16, 2017 stands in effect. Consequently, I find pursuant to s. 55(2)(b) of the Order of Possession dated February 20, 2017 with an effective vacancy date of 2 days after service is re-instated and in full effect.

With regard to the Tenants monetary claim of \$321.66 for aggravated damages; I find the disputes between the parties originate because of unpaid rent which is the responsibility of the Tenant. Consequently I dismiss the Tenant's monetary claim for \$321.66 in aggravated damages.

Conclusion

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

An Order of Possession dated February 20, 2017 is re-instated and in full effect. A copy of the Order has been 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: April 12, 2017.

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