

DECISION

Dispute Codes CNR, DRI, OPT, AAT, O

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for unpaid rent, to dispute a rent increase, to obtain an Order of Possession for the rental unit, to obtain access to the rental unit and for other considerations.

The Tenant said he served the Landlord's Counsel with the Application and Notice of Hearing (the "hearing package") by personal delivery on June 26, 2017. Based on the evidence of the Tenant and the Landlord's counsel, 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 for unpaid rent?
2. Is there a non compliant rent increase and does the Tenant have grounds to dispute?
3. Is the Tenant entitled to an Order of Possession?
4. Is the Tenant entitled to access to the rental unit?
5. What other considerations are there?

Background and Evidence

This tenancy started on September 4, 2016 as a month to month verbal tenancy. The Landlord said the rent is \$800.00 per month payable on the 4th day of each month. The Tenant said he believed the rent was adjusted to a lesser amount but he was not sure of the amount. The Tenant paid a security deposit of \$200.00 at the start of the tenancy.

At the start of the hearing the Tenant said he is living in the rental unit and he agrees that he had unpaid rent in an amount between \$2,000.00 and \$3,000.00. The Tenant said that there is some confusion about the amount of unpaid rent. The Tenant said the amount was not determined in the last hearing and the Landlord may owe the Tenant some compensation. The Tenant continued to say there was a previous hearing regarding a previous 10 Day Notice to End Tenancy for Unpaid Rent and he did not

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receive the decision and the Landlord did not evict him. The Tenant confirmed that he had unpaid rent and he believes the amount to be between \$2,000.00 and \$3,000.00.

The 10 Day Notice to End Tenancy for Unpaid Rent dated June 19, 2017 indicates that the Tenant has \$2,750.00 of unpaid rent as of that date. The Landlord's Counsel said the Tenant has not paid the July, 2017 or August, 2017 rent therefore the amount of unpaid rent is now \$4,350.00. The Landlord's Counsel said the Landlord will be filing an application to recover the unpaid rent at some point in the future.

Further the Landlord's Counsel said the previous 10 Day Notice to End Tenancy for Unpaid Rent was cancelled because it was not served correctly on the Tenant .

The Arbitrator questioned the Tenant on what grounds is the Tenant disputing the 10 Day Notice to End Tenancy for Unpaid Rent dated June 19, 2017, if the Tenant agrees he has unpaid rent in an amount between \$2,000.00 and \$3,000.00. The Tenant said he is not disputing that he owes rent, but the Tenant believes that the Landlord has treated him unfairly and the Landlord has lied in the previous hearing. The Tenant said the Landlord turned off his heat, denied the Tenant access to the rental unit and laundry facilities and wanted to evict the Tenant solely to increase the rent. The Tenant said this is not right.

The Arbitrator said because the Tenant agrees he has unpaid rent and he is not disputing that there is unpaid rent then the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent is valid.

The Tenant said he wants to know how much rent is owing and he would like to pay it.

The Landlord's Counsel said his instructions are that \$4,350.00 is the amount of unpaid rent, but if the Tenant wants to contact him after the hearing they may be able to arrive at a settlement amount to satisfy the unpaid rent amount.

The Tenant said he is not pleased that because the tenancy was ending the hearing would not continue with his other claims.

The Arbitrator said this hearing is first about the tenancy continuing and because the Tenant agrees there is unpaid rent the Landlord will be successful in ending the tenancy. Further the Arbitrator said if the Tenant believes the Landlord has caused the Tenant damage or loss then the Tenant has the right to make an application for monetary compensation. The Arbitrator said there is no monetary claim in this application so those claims can not be dealt with in this hearing.

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.

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 June 19, 2017 stands in effect. Consequently, I find pursuant to s. 55(2)(b) of the Act I award the Landlord an Order of Possession with an effective vacancy date of 2 days after service.

With regard to the Tenant's application to dispute a rent increase, to obtain access to the rental unit and an order of Possession I dismiss these requests as the tenancy is ending, the Tenant has access to the rental unit and there is no monetary claim in the Tenant's application.

Conclusion

The Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent is dismissed without leave to reapply.

An Order of Possession with an effective vacancy date of 2 days after service 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 31, 2017.

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