



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HomeLife Glenayre Realty Chilliwack Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR; ERP; LRE; MNDC; OLC; PSF; RR

Introduction

This is the Tenant's Application for Dispute Resolution seeking to cancel a Notice to End Tenancy for Unpaid Rent; an Order for regular and emergency repairs; an Order that the Landlord provide services or facilities required by law; an Order that the Landlord comply with the Act, regulation or tenancy agreement; an Order restricting or suspending the Landlord's right to access the rental unit; and compensation for damage or loss under the Act, regulation or tenancy agreement.

Both parties attended the Hearing and gave affirmed testimony.

It was determined that the Tenant hand delivered the Notice of Hearing documents to the Landlord's place of business. The Landlord's agent stated that she also received the Notice of Hearing documents by e-mail on October 10, 2017. The Tenant acknowledged receiving the Landlord's documentary evidence by mail "prior to the Hearing". The Tenant did not provide documentary evidence to the Residential Tenancy Branch or to the Landlord.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent issued October 5, 2017 (the "Notice"), be cancelled? Is the Tenant entitled to the other relief set out in her Application?

Background and Evidence

The Landlord provided a copy of the tenancy agreement. Monthly rent is \$1,150.00, due on the first day of each month.

The Landlord issued the Notice on October 5, 2017. The Landlord provided a copy of the Notice in evidence.

The Tenant testified that the Landlord sent her a copy of the Notice by e-mail on October 5, 2017, but that she did not open the e-mail until October 10, 2017. The Tenant made her application to cancel the Notice on October 10, 2017. The Landlord testified that the parties regularly corresponded by e-mail.

The Tenant testified that she paid the outstanding rent on October 27, 2017. The Landlord's agent testified that the Landlord accepted the late rent for "use and occupancy only" and issued the Tenant a receipt indicating such. The Tenant acknowledged that the receipt was marked, "for use and occupancy only. This does not reinstate the tenancy".

The Tenant continues to occupy the rental unit and has not paid any money towards use and occupancy of the rental unit for the month of November, 2017.

Analysis

The Landlord did not serve the Tenant with the Notice in accordance with the provisions of Section 88 of the Act; however I find, pursuant to the provisions of Section 71(c) of the Act, that the Notice was sufficiently given and that the Tenant received the Notice on October 10, 2017.

Section 26(1) of the Act provides:

26 (1) 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.

[Reproduced as written.]

I find that the Tenant had no right under the Act to deduct any portion of the rent. I find that the Notice is a valid notice to end the tenancy and that the tenancy ended on October 15, 2017, pursuant to the provisions of Section 48 of the Act. The Tenant's application to cancel the Notice is dismissed.

I find that the Landlord accepted money for use and occupancy of the rental unit until October 31, 2017. However, the Tenant has not moved out of the rental unit as of

November 10, 2017, and therefore I find that the Landlord is entitled to an Order of Possession, pursuant to the provisions of Section 55 of the Act, effective 2 days after service of the Order upon the Tenant.

The tenancy has ended and therefore the Tenant's application for Orders for regular and emergency repairs; that the Landlord provide services or facilities; that the Landlord comply with the Act, regulation or tenancy agreement; and an Order restricting or suspending the Landlord's right to access the rental unit, are all dismissed.

Rule 2.3 of the Rules of Procedure provide that claims made in an Application for Dispute Resolution must be related to each other. I find that the Tenant's claim for compensation is not sufficiently related to her application to cancel the Notice, and therefore this portion of her Application is **dismissed with leave to reapply**.

Conclusion

The Tenant's Application for compensation under the Act, regulation or tenancy agreement is **dismissed with leave to reapply**. The remainder of the Tenant's Application is **dismissed**.

Pursuant to the provisions of Section 55 of the Act, the Landlord is hereby provided with an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order 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: November 10, 2017

Residential Tenancy Branch