



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant CNR, CNC, LRE
 Landlord OPR, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notices to End Tenancy and to restrict the Landlord's right of entry to the rental unit.

Service of the hearing documents by the Landlord to the Tenant were done by posting them on the door of the Tenant's unit on November 11, 2017.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on November 11, 2017 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to end the tenancy and receive an Order of Possession?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notices to End Tenancy?
2. Is the Tenant entitled to an order to restrict the Landlord's right of entry to the Tenant's rental unit?

Background and Evidence

This tenancy started on October 1, 2017 although the Landlord said the Tenant moved into the unit on September 22, 2017. The tenancy is a fixed term tenancy with an expiry



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date of September 30, 2019. Rent is \$1,600.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$800.00 in September, 2017. A move in condition inspection was completed at the start of the tenancy.

The Landlord said that the Tenant did not pay rent of \$1,600.00 for the month of November, 2017, when it was due and as a result, on November 2, 2017, he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2017 on the door of the Tenant's rental unit. The Landlord continued to say the Tenant paid the November, 2017 rent on November 26, 2017 and the Landlord issued a receipt for "use and occupancy only". The Landlord said he did not re-instate the tenancy. The Landlord said the December, 2017 rent was not paid until December 8, 2017 and again the Landlord issued a receipt for "use and occupancy only". The Landlord continued to say the January, 2018 rent is not paid and the Landlord requested to end the tenancy and to receive an Order of Possession.

Further the Landlord said he issued a 1 Month Notice to End Tenancy for Cause dated November 23, 2017 because the Landlord had received multiple noise complaints about the Tenant and his family. The Landlord said he has had \$700.00 in fees/fines charged to him by the Strata because of the Tenant's behaviour. The Landlord said he wants to end the tenancy.

The Tenant said he has been late with the rent because he does not have cheques with his bank account and the Landlord has refused cash and a money order. The Tenant said he has the rent money and he has tried to pay the Landlord but the Landlord only wants post dated cheques.

The Tenant continued to say the Landlord and the Tenant entered into a written agreement on December 1, 2017 that says the Tenant has paid the rent up to the end of December, 2017 and the Tenant does not have to move out and the Landlord will stop the court action. The Tenant said the Landlord and he agreed to this and then both signed it. The Landlord said that he did sign this agreement. The Landlord's agent said the Landlord signed the agreement under duress because the Tenant intimidated him and the Landlord thought that is how he could get the rent paid. The Landlord's agent said this agreement should not be valid.

The Tenant said he paid the rent, his family moved out so there are no more noise issues and he made an agreement with the Landlord to satisfy the 10 Day Notice to End Tenancy for Unpaid rent and the 1 Month Notice to End Tenancy for Cause. The Tenant said after the agreement was signed he thought things were right with the Landlord.



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The Landlord's agent said even if the Landlord signed this agreement the Tenant has not paid the January, 2018 rent and this should be grounds to end the tenancy.

The Tenant said he did not pay the January, 2018 rent because the Landlord agreed to stop the dispute action against him and the Landlord did not stop it. The Tenant said he has the rent money and he can pay it any time.

Analysis

I have reviewed the evidence submitted and the testimony given at the hearing. I accept the evidence submitted by the Tenant and the testimony given by both the Landlord and the Tenant that a written agreement was made between the parties on December 1, 2017 that re-instated the Tenancy and confirmed that rent payments were current. This agreement is evidence that the Tenant has satisfied the 10 Day Notice to End Tenancy for Unpaid Rent dated November 2, 2017 and the 1 Month Notice to End Tenancy for Cause dated November 23, 2017. Consequently as the two Notices have been satisfied I find the Tenant has established grounds to be successful in his application to have both Notices cancelled. I order the 10 Day Notice to End Tenancy for Unpaid Rent dated November 2, 2017 and the 1 Month Notice to End Tenancy for Cause dated November 23, 2017 are cancelled and the Tenancy is order to continue as stated in the tenancy agreement.

With respect to the unpaid January, 2018 rent the Landlord is at leave to issue a new 10 Day Notice to End Tenancy for Unpaid Rent and to apply to end the tenancy under that Notice.

Further the Landlord's present application is dismissed due to the written agreement re-instating the tenancy.

With respect to the Tenant's application to restrict the Landlord's right of entry I order the Landlord to comply with the Act, regulations and tenancy agreement prior to entering the Tenant's rental unit.

Conclusion



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The 10 Day Notice to End Tenancy for Unpaid Rent dated November 2, 2017 and the 1 Month Notice to End Tenancy for Cause dated November 23, 2017 are cancelled and the Tenancy is order to continue as stated in the tenancy agreement.

The Landlord's application is dismissed without leave to reapply.

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: January 29, 2018.

Residential Tenancy Branch