



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNR

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated January 6, 2009 and effective January 16, 2009. The tenant's application also requested reimbursement by the landlord for the cost of the filing;

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the Ten-Day Notice to End Tenancy for Unpaid was warranted. The questions to be answered include:
 - Did the tenant violate the Act by failing to pay rent when rent was due?
 - Did the tenant have a valid reason under the Act not to pay the rental amount in full?
 - Did the tenant pay the rent in full within 5 days of receiving the Notice to End Tenancy?

The burden of proof is on the landlord/respondent to justify the reason for the Ten-Day Notice.

Background and Evidence

Submitted into evidence by the applicant/tenant in support the application was, a copy of the Ten-Day Notice to End Tenancy dated January 6, 2009. Other evidence from the tenant, including photographs, had been submitted to the Residential Tenancy Branch and the tenant testified that this evidence was also served on the landlord by leaving copies at the office in the complex on Thursday February 5, 2009. However the landlord denied having received this evidence.

The landlord testified that the tenant did not pay rent for the month of January 2009 properly due on January 1, 2009 and that a Ten-Day Notice to End Tenancy was issued on January 6, 2009. the landlord testified that the rent was not paid within five days to cancel the notice and in fact was never paid at all. The landlord testified that the rent for February was not paid and a second Ten-Day Notice was issued.

The tenant acknowledged receiving the notice and did not dispute that the rent was not paid. However, the tenant testified that this was due to “getting the run-around” from the landlord. The tenant testified that repeated requests to have the landlord address serious problems in the unit, including flooding, were ignored and the tenant therefore felt it necessary to withhold the rent. The tenant testified that the tenant never considered making an application to obtain an order against the landlord to force the landlord to fix the problems before taking the action of withholding rent because the tenant was not aware that this right existed under the Act. The tenant also testified that the tenant failed to take note of information on the Ten-Day Notice explaining the rights and obligations with the warning that, “*You are not entitled to withhold your rent*” .

Analysis – Notice to End Tenancy

Section 26 of the Act states that rent must be paid 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.

Given the testimony of the parties, I find that the tenant did not pay the rent when rent was due, the tenant did not pay the arrears within 5 days of receiving the Notice to end Tenancy for Unpaid Rent and the tenant did not have a valid reason under the Act not to pay the rent, even if the alleged violations of the Act by the landlord did occur.

Accordingly, I must dismiss the tenant's application requesting an order to cancel the Ten-Day Notice. During the hearing the landlord made a request for an order of possession. Under the provisions of section 55(1) of the Act, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy.

Conclusion

Based on the testimony and evidence discussed above, I hereby issue an Order of Possession in favour of the landlord effective two days after service to the tenant. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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

February 2009

Date of Decision

Dispute Resolution Officer