



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes:

CNR, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for an order to cancel the notice to end tenancy for non payment of rent, pursuant to Section 46 and for a monetary order to recover the filing fee, pursuant to Section 72.

The tenant was served with a ten day notice to end tenancy on May 07, 2009 effective May 12, 2009. Pursuant to section 53 of the *Residential Tenancy Act*, if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. Accordingly, the effective date of the notice to end tenancy is May 17, 2009.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues

Is the tenant entitled to an order to cancel the notice to end tenancy? Is the tenant entitled to the recovery of his filing fee?

Background and Evidence

The tenant testified that the tenancy started on November 01, 2008. The monthly rent is \$600.00. At the start of the tenancy, the tenant paid \$1,500.00 which consisted of rent for November and December 2008 and \$300.00 for the security deposit.

The tenant testified that on November 15, 2008, the pipes froze thereby cutting off the water supply to the rental home. The tenant advised the landlord about the problem and stated that the landlord did not take any action.

The tenant stated that due to lack of water in the home, the tenant withheld rent. In April 2009, the water supply was restored. The tenant now owed rent for four months (January to April 2009).

The tenant stated that since he did a lot of maintenance jobs around the house, in April, he offered the landlord \$850.00 to bring him up to date with rent. The landlord refused the offer as the tenant now owed rent for January to April in the amount of \$2,400.00

The landlord testified that he had installed a new pump prior to the start of the tenancy and due to the tenant's negligence, the pipes froze, thereby shutting off the water supply to the home. In addition, due to the severe winter of 2008/2009 the problem could not be resolved until the temperatures turned milder.

On May 07, 2009, the landlord served the tenant with a notice to end tenancy when the tenant refused to pay the complete amount of rent.

Analysis

Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

The tenant received the notice on May07, 2009 and did not pay the outstanding rent within five days of receiving it. Accordingly, the notice to end tenancy is upheld and the tenant's application to cancel the notice to end tenancy is dismissed.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1), of the *Residential Tenancy Act*, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession effective two days after service on the tenant.

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.

During the hearing, for safety reasons, the landlord requested, that he be allowed to serve the order of possession on the tenant by posting the notice on the gate at the entrance to the property.

Given the hostile nature of the relationship that exists between the landlord and the tenant herein, I grant the landlord's request. The landlord may serve the order of possession on the tenant by posting the order on the gate that the tenant must access to gain entry to the rental home. The tenant is aware of this arrangement and stated that he has already packed most of his belongings and plans to move out immediately.

Conclusion

The landlord is granted an order of possession, effective two days after service on the tenant. The tenant must bear the cost of filing this application.

Dated June 10, 2009.

Dispute Resolution Officer