

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: MT, CNR, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for an order to set aside the notice to end tenancy for unpaid rent. The tenant also applied for more time to do so and for the recovery of the filing fee.

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

The tenant stated that the ten day notice to end tenancy was served on her, in person on June 29, 2009. The tenant applied to dispute the notice on June 30, 2009. Since the tenant applied to dispute the notice within the five day time frame, her application for more time to dispute the notice is moot.

This hearing only dealt with the tenant's application to cancel the notice to end tenancy and for the recovery of the filing fee.

Issues to be decided

Does the landlord have reason to end the tenancy or should the notice to end tenancy be set aside and the tenancy be allowed to continue? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on November 01, 2006. The monthly rent is \$700.00 due in advance on the first day of the month.

The tenant owed \$100.00 for rent for May and failed to pay rent for June. The landlord served the ten day notice to end tenancy on June 29, 2009. The tenant continues to occupy the rental unit and has not paid rent for July or August 2009.

Analysis

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy for unpaid rent, on June 29, 2009 and did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy, on the date set out in the Notice and must vacate the rental unit by that date. Accordingly, the notice to end tenancy is upheld and therefore the tenant's application to cancel the notice is dismissed.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession effective two days after service on the tenant. Under the provisions of section 55(1), 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. 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.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective two days after service on the tenant. The tenant must bear the cost of filing her application.

Dated August 13, 2009.

Dispute Resolution Officer