

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, ERP, RP, 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 make this application, for the recovery of the filing fee and for an order to direct the landlord to make repairs.

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 him, in person on July 03, 2009. The tenant applied to dispute the notice on July 07, 2009. Since the tenant applied to dispute the notice within the five day time frame, his 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, for the recovery of the filing fee and for an order for the landlord to carry out repairs. The landlord requested for an order of possession in the event the tenant's application to cancel the notice to end tenancy was unsuccessful.

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? Has the landlord neglected to carry out repairs?

Background and Evidence

The tenancy started on April 01, 2007. The monthly rent is \$1,300.00 due in advance on the first day of the month. The tenant failed to pay rent for July. The landlord served the tenant with a ten day notice to end tenancy on July 03, 2009.

The tenant paid \$600.00 towards rent for July and paid the balance on July 30, 2009.

The tenant continues to occupy the rental unit and has not paid rent for 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 July 03, 2009 and did not pay full 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.

Since the tenancy is ending, the tenant's application for repairs is no longer necessary and is therefore dismissed. The tenant has not proven his case. Therefore his claim for the recovery of the filing fee is also dismissed.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective on or before 1:00 p.m. on August 31, 2009. The tenant must bear the cost of filing his application.

Dated August 20, 2009.

Dispute Resolution Officer