



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, MNDC

Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and for compensation for damage or loss under the Act or tenancy agreement.

RTB Rule of Procedure 2.3 states that “if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.” The Tenant’s application says that the claim has to do with “(1) fraud in inducing the tenant to enter the tenancy agreement, (2) harassment and intimidation resulting in the tenant having to call the police and (3) claiming rental amount in excess of agreement.” The Landlord said that 4 days after she served the Tenant with a 10 Day Notice to End Tenancy, the Tenant contacted her to advise her that he was making a monetary claim against her for \$25,000.00 unless she settled with him. The Landlord said she asked the Tenant what he was talking about and he said he had been intimidated by another tenant of the rental property. In the circumstances, I find that the Tenant’s claim for compensation is not related to his application to cancel a 10 Day Notice to End Tenancy and it is dismissed with leave to reapply.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started on or about April 28, 2010. The Landlord said that rent is \$850.00 per month payable in advance on the 1st day of each month however the Tenant claimed it was \$375.00 per month.

The Tenant provided as evidence an e-mail he sent to the Landlord dated April 16, 2010 in response to her advertisement for the rental unit for \$850.00 per month. The Tenant asked “are you negotiable on rent/mortgage for the first month or so?” On April 21, 2010, the Landlord replied, “I may be interested in doing something for you. Please give me a call.” The Tenant said he viewed the rental unit advised her about his

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financial circumstances and the Landlord gave him the keys. Consequently, the Tenant said he assumed he had an agreement with the Landlord to pay \$375.00 per month until he found employment and got back on his feet financially but admitted that the Landlord may not have been under the same impression.

The Landlord said the Tenant gave him a cheque for \$375.00 in partial payment of May 2010 rent when he moved in and told her that he would pay the balance within a few weeks. A few days later, the Landlord said the Tenant contacted her and told her not to cash the cheque because there weren't sufficient funds to cover it. The Landlord said she asked the Tenant at the end of the month if she could cash the cheque and he said "no." The Landlord said the Tenant has made no rent payments during the tenancy. Consequently, on September 13, 2010, the Landlord said she posted a 10 Day Notice to End Tenancy for Unpaid Rent on the rental unit door with a witness present.

The Parties agree that in August 2010 the Tenant offered to get a shelter allowance through social assistance so that he could pay \$375.00 each month to the Landlord but she said that was not acceptable. The Tenant admitted that he has not paid any rent.

Analysis

Section 46(2) of the Act says that a Notice to End Tenancy for Unpaid Rent must comply with s. 52 of the Act. Section 52 of the Act says that in order to be effective a notice to end tenancy must be in writing and must (among other things) be signed and dated by the landlord or tenant giving the notice. The 10 Day Notice to End Tenancy served on the Tenant on September 13, 2010 is signed but not dated by the Landlord.

Section 68(1) of the Act states that if a notice to end tenancy does not comply with s. 52, the director may amend the notice if satisfied that the person receiving the notice knew, or should have known, the information that was omitted from the notice and in the circumstances, it is reasonable to amend the notice. I find that the omission of the date on the 10 Day Notice to End Tenancy for Unpaid Rent does not invalidate the Notice. In particular, the Tenant did not dispute receiving the Notice on September 13, 2010 and I find that he knew or would have known that it would have been prepared on or about that date. Furthermore, I find that the omission of the date on the Notice did not prejudice the Tenant in any way and as a result, I find that it is reasonable to amend the Notice to add the date "September 13, 2010."

This also means that the effective date of the Notice should have stated September 26, 2010 and pursuant to s. 53 of the Act it is corrected. In all other respects I find that the 10 Day Notice to End Tenancy is a valid and enforceable Notice.

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Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. I find that the Tenant was served with the 10 Day Notice to End Tenancy on September 13, 2010 and pursuant to s. 90 of the Act he was deemed to receive it 3 days later on September 16, 2010. Although the Tenant applied to cancel the 10 Day Notice to End Tenancy for Unpaid Rent, I find that there are no grounds for his application. In particular, even if rent was \$375.00 per month as the Tenant alleged (and I make no finding in that regard), the Tenant would have had rent arrears of \$1,875.00 at the time the Notice was served on him and he admitted that he has paid no rent since he moved in or since receiving the Notice.

As a result, the Tenant's application to cancel the 10 Day Notice is dismissed without leave to reapply. The Landlord requested and I find pursuant to s. 55(1) of the Act that she is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant.

Conclusion

The Tenant's application for compensation is dismissed with leave to reapply. The Tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent is dismissed without leave to reapply. An Order of Possession effective 2 days after service of it has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.

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: October 26, 2010.

Dispute Resolution Officer