



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, OLC, RP

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy, an order that the landlord comply with the Act and an order that the landlord perform repairs. Both parties participated in the conference call hearing.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that the tenant did not pay rent for March – December 2010 inclusive. The parties further agreed that on or about December 14 the tenant was served with a 10 day notice to end tenancy for unpaid rent. The tenant testified that he did not pay his rent because the landlord had not performed repairs.

Analysis

Section 26(1) of the Act provides that tenants must pay rent when it is due regardless of whether the landlord complies with the Act. I find that the tenant had no legal basis on which to withhold his rent and accordingly find that the landlord has established grounds to end the tenancy. The tenant's claim for an order setting aside the notice to end tenancy is dismissed. As the tenancy will be ending, I also dismiss the claim for an order that the landlord comply with the Act and an order that the landlord perform repairs.

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, 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 tenant's claim is dismissed. The landlord is granted an order of possession.

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: January 19, 2011

Residential Tenancy Branch