



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MT, CNR, OPT, AAT

Introduction

This matter dealt with an application by the tenant for more time to cancel a 10 Day Notice to End Tenancy, to cancel the Notice to End Tenancy for Unpaid Rent, for an Order of Possession and for an Order allowing access to and from the unit.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the landlord on January 22, 2011. The landlord confirmed receipt of the hearing documents.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Preliminary issues

The tenant has applied for more time to cancel the Notice to End Tenancy. The Notice was served to the tenant on January 10, 2010 and the tenant filed his application to cancel this on January 14, 2010 and amended his application on January 21, 2011 when he collected it from the Service BC Office. The tenant then sent the landlord the amended application. As the tenant original filed his application on January 14, 2010 and was advised to include the code to cancel the Notice I find he did apply within the five allowable days and therefore he does not require more time to cancel the Notice.

Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the Notice to End Tenancy for unpaid rent?
- Is the tenant entitled to an Order of Possession?
- Is the tenant entitled to an Order allowing access to and from the rental unit?

Background and Evidence

Both parties agree that this tenancy started on September 01, 2010. This was a month to month tenancy and rent for this unit is \$450.00 per month due on the first of each month.

The landlord testifies that they have a written tenancy agreement in place signed by the parties in September, 2010. As part of this agreement they have also both signed a written addendum to the agreement of which section one states: house painting services will be provided by the tenant in lieu of rent, weather permitting, for three months rent.

The landlord testifies that the tenant did not start to pay the rent in December, 2009 after the three months lieu period expired and he also failed to pay rent for January, 2011. The landlord states he then served the tenant with a 10 Day Notice for unpaid rent on January 10, 2011. The Notice states the tenant owed \$900.00 in rent and the effective date of the Notice is January 20, 2010. The tenant had five days to pay the rent or dispute the Notice.

The landlord states the tenant did not pay the outstanding rent and now also owes rent for February, 2011. The landlord seeks an Order of Possession to take effect as soon as possible.

The tenant agrees he did not pay rent for December, 2009 and January, 2011. The tenant does not recall the addendum he signed to the tenancy agreement and states he would not have agreed to waive the rent for just three months for painting the whole house. The tenant states he believed that the rent for these months was covered by the work he had done in painting the house. The tenant states he sent the landlord quotes for his work and quotes from other painters to show the landlord how much it would cost for this level of work.

The tenant testifies that when the landlord came to collect the rent for December he told him he did not owe rent until the New Year and states the landlord was happy with this.

The landlord testifies that he did not agree the tenant could deduct Decembers rent. He states he told the tenant he would look at the tenancy agreement again. The landlord testifies that after looking at the terms agreed in the tenancy agreement he discovered the agreement was for three months rent in lieu of painting and not four months as the tenant claimed.

The tenant seeks an Order of Possession to remain in the rental unit and seeks an Order to allow access to and from the rental unit. The tenant agrees the landlord has not restricted access but states the landlord has turned off the furnace and internet service and he was advised to check this box on his application form. The tenant agrees he has not notified the landlord of the loss in service.

The landlord states he has not turned off the furnace. The tank was refilled which can cause an air bubble. He states he has now rebooted this and the furnace is back on. The landlord states the tenant is responsible to pay for his internet service although it is in the landlords' name. The landlord states the tenant has not notified him that he has lost this service

Analysis

The landlord has provided a copy of the tenancy agreement and the addendum to this agreement which has been signed by the parties. The addendum clearly states that the tenant was to get three months rent in lieu of painting services and as such this is the agreement he had with the landlord. If the tenant cannot later recall agreeing to these terms or finds the terms to be less than the value of the work he undertook to carry out then he is still bound by the terms of this agreement and should have started to pay his rent from December, 2010. As the tenant has failed to do this it is my decision that the 10 Day Notice will remain in force and effect and the landlord is entitled to an Order of Possession due to unpaid rent pursuant to s. 55 of the *Act*.

The tenants claim for an Order of Possession for the rental unit is therefore dismissed.

I further find the tenants application for an Order for access to the rental unit has no bearing on the alleged loss of facilities and as the tenant has not notified the landlord in writing that any of these facilities have been lost am not prepared to make a finding in this matter and it is also dismissed.

Conclusion

The tenants' application is dismissed in its entirety without leaves to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service** on the tenant. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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: February 04, 2011.

Residential Tenancy Branch