



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, FF

Introduction

This matter dealt with an Application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 7, 2011 and to recover the filing fee for this proceeding.

Issue(s) to be Decided

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

Background and Evidence

From July 1, 2009 until July 31, 2010, the Tenant resided in another suite in the rental property at a rental rate of \$780.00 per month. In July 2010, the Tenant became the maintenance manager of the rental property and as part of his remuneration he was given the use of the rental unit plus a salary. The Landlord claimed that rent of \$780.00 was attributed to the rental unit under the Tenant's benefit package however the Tenant claims it was \$750.00 as per wage statements he provided as evidence.

The Tenant's employment ended on January 31, 2011 and as a result, the Landlord said the Tenant was required to pay rent commencing February 1, 2011. The Landlord said the Tenant did not pay rent when it was due and as a result, on February 7, 2011, he was served in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 7, 2011. The Landlord said the Tenant has not paid rent for February or March 2011 although he currently receives a rent payment from WCB.

The Tenant claimed that the Landlord wrongfully terminated his employment. The Tenant argued that under the terms of his employment agreement, the Landlord was required to give him 2 weeks written notice of termination. The Tenant also claimed that the Landlord did not pay him for the 2 weeks (in lieu of notice) or 2 weeks wages. The Tenant agreed that he was responsible for rent for February 2011 but argued that until such time as he received these wages he should not be responsible for paying rent for February 2011. The Tenant admitted that he receives benefits from WCB which includes the portion attributed to his rent.

Analysis

I find that there is no merit to the Tenant's argument that he is not responsible for paying rent for February 2011 because rent was included in his wages and the Landlords did not fulfill their obligation to pay him wages under the employment agreement. It is outside the jurisdiction of the Act for me to determine if the Tenant's employment was wrongfully terminated or not or whether the Landlord breached the employment agreement or not. However, the Parties' employment agreement provides that the Tenant will vacate the rental unit on his last day of employment. Consequently, I find that it was the intention of the parties that once the Tenant's employment ended his right to withhold rent also ended. As a result, I find that once the Tenant's employment ended, he was responsible for paying rent for the rental unit. Furthermore, the Tenant admitted that he was responsible for the rent but simply suggested that he should not have to pay it until he received wages (the entitlement to which appears to be in dispute).

I find that rent of \$750.00 for February 2011 was due on February 1, 2011, that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent on February 7, 2011 and that the Tenant failed to pay the amount owing within the 5 days granted under s. 46(4) of the Act. Consequently, I find that there are no grounds for granting the Tenant's application to cancel the 10 Day Notice and it is dismissed without leave to reapply. The Landlords requested and I find pursuant to s. 55(1) of the Act that they are entitled to an Order of Possession to take effect at 1:00 p.m. on March 31, 2011.

Conclusion

The Tenant's application is dismissed without leave to reapply. An Order of Possession to take effect at 1:00 p.m. on March 31, 2011 has been issued to the Landlords. 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: March 09, 2011.

Residential Tenancy Branch