



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNDC, OLC, RP, FF

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, a monetary Order for damage or loss under the Act, an Order the landlord comply with the Act, make repairs and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord entered the hearing 8 minutes after the hearing commenced. At this point I again reviewed the tenant's application and explained the hearing process.

The tenant testified that the rental unit had been sold and that he has met the new landlord. The original landlord, S.S., provided affirmed testimony that the new owner had asked him to act as his agent at this hearing. Therefore, the application was amended to include the property owner/current landlord's name as respondent; the tenant confirmed the owners name as that provided by the agent.

Later in the hearing the tenant stated that the new owner had indicated he would not proceed with eviction; I explained that the current landlord would enforce any Order, at his discretion. The tenant also then questioned the status of the sale of the property.

I requested the landlord submit evidence of the sale; which the landlord stated he would do. The landlord provided a copy of a New Westminster Land Title Office document indicating the transfer of property to the new owner, effective May 31, 2011.

The tenant testified that his monetary claim related to services provided to the landlord as part of an employment agreement; I declined to hear that portion of the claim as it was

not within the jurisdiction of the Act. The tenant stated he has proceeded to Small Claims Court.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on May 10, 2011, be cancelled?

Should the landlord be Ordered to complete repairs to the rental unit?

Is the tenant entitled to filing fee costs?

Background and Evidence

The landlord and the tenant agree that a 10 Day Notice to End Tenancy for Unpaid Rent was issued on May 10, 2011, and posted to the door on that date. The Notice had an effective date of May 10, 2011.

The tenant confirmed that he has not paid May rent and has not paid June, 2011, rent owed. The tenant believes the landlord is not entitled to rent owed as repairs are required to the roof and other areas of the unit. The tenant confirmed he does not have an Order allowing him to cease rent payments.

The tenant stated that he will not move out unless the landlord hires a bailiff. The landlord stated that they want the tenant out of the rental unit; that he must move out.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the tenant has failed to pay May and June, 2011 rent owed and that the Notice issued on May 10, 2011, is of full force and effect.

The Notice was served to the tenant effective 3 days after posting; May 13, 2011.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to May 23, 2011.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant applied to cancel the Notice but has confirmed he had no authority as provided by the Act, to cease making rent payments.

Section 55(1) of the Act provides:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's Application to cancel the Notice; as he has not paid the rent owed.

The landlord has effectively requested possession of the rental unit; therefore, pursuant to section 55 of the Act, I find that the landlord is entitled to an Order of possession; effective 2 days after service to the tenant.

As the tenancy is ending there is no need to issue any Order for repair.

Conclusion

As I have determined that the tenant has failed to pay rent I find that the 10 Day Notice to End Tenancy for Unpaid Rent issued on May 10, 2011, is of full force and effect.

The tenant's Application for dispute Resolution is dismissed without leave and, based upon the request of the landlord I have issued an Order of possession to the landlord, pursuant to section 55(1) of the Act.

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The application has been amended to reflect the current landlord's name.

No Orders are required in relation to repair or compliance with the Act, as the tenancy is ending.

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: June 03, 2011.

Residential Tenancy Branch