



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, ERP, RP, PSF, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for more time than permitted by the *Residential Tenancy Act* to make an application to cancel a notice to end tenancy; for an order cancelling a notice to end tenancy for unpaid rent or utilities; for an order that the landlord make emergency repairs to the rental unit for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for an order that the landlord provide services or facilities required by law; and to recover the filing fee from the landlord for the cost of this application.

The hearing was scheduled to proceed at 1:30 p.m. on this date. The line remained open while the phone system was monitored for ten minutes and the only participants who called into the hearing during this time were the Respondent and the Respondent's agent.

The applicant failed to attend to present the claim, and the Respondent appeared and was ready to proceed.

In the absence of the party who made the application, I dismiss the claim without leave to reapply.

During the course of the hearing, the landlord's agent requested an Order of Possession. The *Residential Tenancy Act* states as follows:

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.

The landlord's agent provided oral affirmed testimony, and the tenant provided evidence in advance of the hearing. The oral testimony and the tenant's evidence have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began approximately June 23, 2011, and the tenant still resides in the rental unit. Rent in the amount of \$650.00 per month, which includes utilities, is payable in advance on the 1st day of each month. A security deposit in the amount of \$250.00 was requested by the landlord, but the tenant did not pay the security deposit.

The landlord's agent further testified that the tenant and landlord made an agreement that the tenant could move in during the month of June, 2011 and would not be required to pay rent for the months of June or July, 2011 in exchange for the tenant providing painting services for the landlord inside the rental unit. The tenant advised the landlord that the painting supplies cost more than anticipated, and the landlord agreed to deduct a further \$50.00 from rent payable and did so for the month of August, 2011.

The tenant only paid the landlord \$400.00 for rent for the month of August, 2011, leaving a balance due of \$200.00. The tenant paid no rent for the month of September, 2011, leaving a balance due to the landlord of \$850.00.

On September 3, 2011, the landlord's agent personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided by the tenant in advance of the hearing. The notice is dated September 2, 2011 and states that the tenant failed to pay rent in the amount of \$850.00 that was due on September 1, 2011. The notice also contains an expected date of vacancy of September 12, 2011, and both pages of the 2-page form have been provided.

The tenant has further failed to pay any rent for the month of October, 2011.

Analysis

I accept the evidence of the landlord's agent and find that at the time the notice to end the tenancy was served on the tenant, the tenant was in arrears of rent the sum of \$850.00. The *Residential Tenancy Act* states that if a tenant fails to pay rent when it is

due, the landlord may, on any day after the day rent is payable, serve the tenant with a notice to end the tenancy. The tenant then has 5 days to pay the rent in full or dispute the notice by filing an application for dispute resolution. If the tenant pays the rent, the notice is of no effect. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be 10 days from the date the tenant is served with the notice, to vacate the rental unit.

In this case, I find that the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities personally on September 3, 2011. I further find that the effective date of the notice ought to read September 13, 2011, however pursuant to Section 53 of the *Residential Tenancy Act*, the effective date of the notice is deemed to be the earliest date that complies with the *Act*. The tenant has not paid the outstanding rent and did not apply for dispute resolution until September 14, 2011. The tenant did not attend the hearing, and as previously mentioned in this Decision, the tenant's application is dismissed. Therefore, I find that the landlord is entitled to an Order of Possession.

The landlord has not made an application for dispute resolution to claim any monetary amount from the tenant for unpaid rent or utilities and I decline to make any such order.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant. The tenant must be served with the Order of Possession. If the tenant is served with the order and fails 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.

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 12, 2011.

Residential Tenancy Branch