



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, MT, RP, FF

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for unpaid rent, to order the landlord to make emergency repairs, to order the landlord to make repairs, more time to file an application and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

On November 2, 2011 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, the tenant filed to dispute this notice on November 8, 2011.

The only evidence submitted by the tenant for this hearing was served on the landlord and the Residential Tenancy Branch on November 16, 2011. It was explained to both parties that the Dispute resolution Officer was not in possession of the physical file however as neither party had submitted any other evidence, both agreed to the hearing continuing.

The tenant testified that that he had been busy with work and trying to build his own business and that was why he did not file his application within 5 days as specified by the Act. The tenant stated that when he applied for more time it was explained to him by Residential Tenancy Branch staff that his circumstances would probably not be considered exceptional.

The tenant stated that he had done work for the landlord and that this amount should have been deducted off the rent owed. The landlord testified that the tenant had been given a \$160.00 credit on the August 2011 rent and this was for the tenant taking discarded items to the transfer station.

The landlord stated that since the tenant move in the \$450.00 security deposit remains unpaid, there is a balance of \$250.00 owed on the August rent and the September, October and November rent have not been paid. The landlord stated that at this time the tenant owes the landlord \$2190.00 in unpaid rent. The landlord stated that the tenant also has not paid any of the utilities since he took possession of the rental unit and utilities are noted as the tenant's responsibility on the tenancy agreement.

The tenant stated that there is mold in the bathroom and that the landlord has still not changed the locks for him. The landlord stated that had the tenant contacted her and advised her that the bathroom fan was not working and that the bathroom was getting moldy that she would have addressed the issue. The landlord stated that she would also have addressed the issue of the locks but that at the start of the tenancy the tenant said he would take care of the locks.

The tenant admitted that he did not have any written agreement with the landlord to complete landscaping at the rental unit or that there was a written agreement to complete work at the property in exchange for rent. The landlord stated that they would offer work to the tenant if they had it but stated that they just don't. The landlord also stated that if the tenant paid the rent owed and paid the utilities that they had no issues with the tenancy continuing.

The tenant stated that at this time he could not pay the rent owed the landlord. The tenant and landlord **agreed to mutually end the tenancy on November 26 at 1:00PM.**

The tenant then, at the 28 minute mark, disconnected from the hearing.

The landlord, per section 55 of the Residential Tenancy Act verbally requested an order of possession for the rental unit with an effective date of November 26, 2011.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on the day it is personally served, or on November 2, 2011. Consequently, the Tenants would have had to pay the amount stated on the Notice or apply to dispute that amount no later than November 7, 2011.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice.

The tenant was not able to establish that there were exceptional circumstances that kept him from filing the application to dispute the notice on time. Therefore the tenant's application to set aside the landlord's notice of November 2, 2011 and for more time to file an application is dismissed without leave to reapply and the landlord's notice is in effect.

Residential Tenancy Policy **Guideline 36. Extending a time period**

The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² provide that an arbitrator may extend or modify a time limit established by these Acts **only in exceptional circumstances**. An arbitrator may not extend the time limit to apply for arbitration beyond the effective date of a Notice to End a Tenancy and may not extend the time within rent must be paid without the consent of the landlord.

The landlord, per section 55 of the Residential Tenancy Act verbally requested an order of possession for the rental unit with an effective date of November 26, 2011 and I find that the landlord is entitled to an order of possession.

The tenant has not established that there was any agreement with the landlord whereby he would complete work on the property in exchange for rent. Based on the landlord's testimony the tenant does owe the landlord \$2190.00 in unpaid rent in addition to unpaid utilities.

In regards to the tenant's application for emergency repairs and repairs to the rental unit, I find that the tenant, prior to this hearing, has not provided notice the landlord that repairs were needed. However as the landlord is now aware that a problem exists with the bathroom fan, the landlord is hereby Ordered to repair or replace the bathroom fan by November 30, 2011. The landlord will not be ordered to complete any other repairs on the rental unit as the tenant has not established their claim in this regard.

The tenant and landlord have **agreed to mutually end the tenancy on November 26 at 1:00PM.**

The tenant's application is dismissed without leave to reapply.

Conclusion

The tenant's application is dismissed without leave to reapply.

I hereby grant the landlord an **Order of Possession** effective not later than **1:00 PM, November 26, 2011**. This Order must be served on the tenant(s) and 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: November 17, 2011.

Residential Tenancy Branch