



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a 10 Day Notice to End Tenancy.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the tenancy started on September 1st, 2011. The rent is \$750.00 per month and the tenants paid a security deposit of \$375.00.

The landlord testified that the tenants continue to owe \$375.00 for unpaid rent for October 2011; and that they continue to reside in the unit and have not paid rent for November. The landlord is requesting an order of possession and updated his monetary claim to reflect November's unpaid rent for a claim totalling \$1125.00.

The tenants testified that they are welfare recipients. They stated that they intended to give the landlord notice to end tenancy effective November 1st, 2011; they stated that they paid half the rent for October because they did not think that the landlord would return their security deposit. They stated that Social Services discontinued subsidizing their rent since the 10 Day Notice to End Tenancy was issued, which is why they could not afford to pay November's rent.

Analysis

Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. On the evidence I accept that the tenants failed to pay rent. There are no provisions under the Act allowing tenants to forfeit their security deposit in lieu of rent. I find that the landlord had grounds to issue a 10 Day Notice to End Tenancy and that the notice is valid. At the hearing the landlord made an oral request for an Order of Possession.

Section 55(1) of the *Residential Tenancy Act* states:

"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."*

Since the tenants' application is dismissed, the landlord is entitled to an order of possession.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This 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: November 07, 2011.

Residential Tenancy Branch