



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNR, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenant: as an application for cancellation of a Notice to End Tenancy for unpaid rent, and to recover the filing fee associated with this application.

By the landlord: as an application for an Order of Possession, and to recover the filing fee associated with this application.

Issue(s) to be Decided

Should the notice to end tenancy be set aside?

Is the landlord entitled to an order of possession?

Should the parties recover the filing fee for their application?

Background and Evidence

The rental unit consists of an apartment in a subsidized housing complex. Pursuant to a written agreement, the fixed term tenancy started on March 1st, 2011 and is to end on February 29th, 2012. The tenant's subsidized portion of the rent is \$859.00 per month and the tenant paid a security deposit of \$350.00.

The landlord testified that the tenant only paid \$600.00 towards October rent and has \$259.00 still owing. The landlord said that it is the society's practice to enter into fixed term agreements; he said that the society reviews tenant's income each year, and that rent is adjusted accordingly upon signing a new fixed term agreement. He said that he has been accommodating with this tenant, accepting at times partial rent payments. He said that rent is never adjusted within a fixed term, and that the amount of rent for this tenant would be reviewed at the end of the agreement. The landlord's counsel stated that the society has not received sufficient documentation from the tenant to prove his income, and reiterated the review is done at the end of the fixed term for consideration for the new tenancy.

The tenant stated that as of April 18th the amount of pension went into a state of transition when he turned 65 years of age, but that he still managed to pay the full rent. He said that his disability insurance compensation terminated on July 24th, and that at that point he was no longer able to pay the full rent. He said that he had a verbal agreement with the landlord that his rent might be lowered. The landlord clarified that if rent was lowered, it would happen once the fixed term tenancy is expired. The tenant said that his union sponsors the society; he felt the landlord ought to take this as consideration for leniency.

In his documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy dated October 14th, 2011 with an effective date of October 24th, 2011; and it was served on the tenant by posting it on the tenant's door. The *Residential Tenancy Branch* copy was completely blacked out through the fax machine and illegible; however the tenant confirmed having received the notice, and agreed on the details specified on the notice.

Analysis

The tenancy agreement is a contract of adhesion drawn by the landlord. If the tenant wished to rent from the landlord under any other terms than those specified in the agreement, he ought not to have signed the agreement for a fixed term of one year. Once signed, the tenant is obliged to accept the terms of the agreement without modification.

On the parties' testimony I accept that the tenant has not paid full rent and that the landlord had grounds to issue a 10 Day Notice to End Tenancy. Accordingly the landlord is entitled to an order of possession.

Conclusion

The tenant's application is dismissed and the notice to end tenancy is valid.

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.

Since the landlord was successful, the landlord is entitled to recover the \$50.00 filing fee, which I authorize him to deduct from the tenant's security deposit.

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 09, 2011.

Residential Tenancy Branch