



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for an order to set aside the notice to end tenancy for unpaid rent. The tenant also applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Does the landlord have reason to end the tenancy or should the notice to end tenancy be set aside and the tenancy be allowed to continue? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on January 24, 2011. The monthly rent is \$1,000.00 due in advance on the first day of the month. After a few late payments of rent, the landlord agreed to allow the tenant to pay rent in instalments of \$250.00 on the 1st, 8th, 16th and 24th of each month. The tenant fell behind on rent and on October 02, 2011, the landlord served the tenant with a ten day notice to end tenancy for non payment of rent.

At the time of the hearing the tenant owed the landlord a total of \$1,450.00 in unpaid rent.

Analysis

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy for unpaid rent, on October 02, 2011 and applied to dispute the notice within the legislated time frame of five days.

Even though the tenant made application within five days, I have to uphold the notice to end tenancy because the tenant did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy, on the date set out in the Notice and must vacate the rental unit by that date. Accordingly, the notice to end tenancy is upheld and therefore the tenant's application to cancel the notice is dismissed.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession effective two days after service on the tenant. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail 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.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective two days after service on the tenant. The tenant must bear the cost of filing his application.

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 02, 2011.

Residential Tenancy Branch