



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 the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant confirmed that he received the landlord's 10 Day Notice posted on the tenant's door by the landlord on December 3, 2011. The landlord confirmed that she received the tenant's dispute resolution hearing package sent by the tenant by registered mail on December 8, 2011. I am satisfied that these documents were served in accordance with the *Act*.

Other than the tenant's application for dispute resolution, the only written evidence received by the Residential Tenancy Branch (RTB) in advance of this hearing was a 10 page package of evidence faxed by the landlord received shortly before this hearing. The landlord said that she had not served these documents to the tenant, although she believed that he had all of this information. The tenant confirmed that he had copies of the original residential tenancy agreement and the landlord's 10 Day Notice. However, he said that he did not have a copy of the landlord's rent ledger for his tenancy, a critical issue in this dispute. The landlord read into the record this document as oral testimony.

At the hearing, the landlord made an oral request for an Order of Possession if the tenant's application were dismissed.

Issues(s) to be Decided

Should the tenant's application to cancel the 10 Day Notice be allowed? If not, should the landlord be issued an Order of Possession? Is the tenant entitled to recover his filing fee for this application from the landlord?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on February 3, 2007. At the expiration of the initial term, this converted to a month-to-month tenancy. Monthly rent is currently set at \$917.00, payable in advance on the first of each month. The landlord retains the tenant's \$422.50 security deposit paid on February 1, 2007.

At issue was whether the tenant actually paid his October 2011 rent. The tenant testified that until this hearing he did not realize that the rent in dispute identified in the 10 Day Notice was actually related to his October 2011 rent payment. He said that he will need to check his records to retrieve his money order receipt for that rental payment. The landlord said that she has explained the outstanding rent issue to the tenant a number of times and the landlord has still not received a rental payment from the tenant for October 2011.

Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to a settlement of their dispute on the following terms:

1. Both parties agreed that by 1:00 p.m. on December 27, 2011, the tenant will either provide to the landlord a satisfactory receipt for the money order he provided for his October 2011 rental payment or make a payment for all of his October 2011 rent plus the \$25.00 late fee by way of a certified cheque or money order.
2. Both parties agreed that if the tenant provides a satisfactory receipt to the landlord regarding his money order for his October 2011 rent, the landlord will cancel the 10 Day Notice issued on December 3, 2011 to allow the parties to resolve the issue of the missing October 2011 rent payment. This resolution will enable the landlord to receive payment for the tenant's October 2011 rent.
3. Both parties agreed that if the tenant does not comply with the terms of this agreement, the tenancy will end by 1:00 p.m. on December 31, 2011 by which time the tenant will have vacated the rental premises.
4. If the tenant does not comply with the terms of this agreement, the tenant agreed to pay \$942.00 to the landlord for his October 2011 rent and the late fee applied to that month's rent.

5. Both parties agreed that these particulars constitute a final and binding resolution of the issues in dispute arising out of this tenancy at this time.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I cancel the 10 Day Notice with the effect that this tenancy continues if the tenant abides by the terms of this agreement with the landlord.

I issue the attached Order of Possession to be used by the landlord only if the tenant does not abide by the terms of their agreement. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the amount of \$942.00 to be used in support of the above agreement for use only in the event that the tenant does not abide by the terms of the above settlement. The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible after December 27, 2011. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: December 22, 2011

Residential Tenancy Branch