



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR

Introduction

This hearing dealt with an application by the tenants for more time to file an application and to cancel a notice to end tenancy for unpaid rent. Both parties attended the hearing.

Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

Background and Evidence

This tenancy began November 1, 2011 with monthly rent of \$1320.00.

On December 5, 2011 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent.

The tenant testified that they were served with a 10 day notice to end tenancy for unpaid rent on December 5, 2011 and that the application to dispute the notice was filed on December 12, 2011. As the 5th day on which to file the application fell on a Saturday, the tenants filed the application on the next available business day which was December 12, 2011. Therefore the tenant's application is on time and '*more time to file an application*' is not required. This portion of the tenant's application is hereby dismissed.

The tenants stated that they wanted to have the 10 day notice to end tenancy for unpaid rent set aside as he had been having trouble getting paid. The tenant stated that he had almost all of the December rent and could provide the money to the landlord tonight and that he would have the January 2012 rent.

The landlord stated that he had concerns about the tenant not having the rent as from the start of the tenancy there have been problems with the tenant getting the rent paid. The landlord stated that he would like an order of possession but that because it is the holiday season he is willing to have an order of possession date of December 31, 2011.

The landlord stated that if the tenant is able to pay the December rent and pays the January rent that he would not enforce the order.

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.

The tenant in this case did make an application to dispute the notice within the required time period however the fact remains that the tenant has not paid the December 2011 rent in the amount of \$1320.00. As the rent remains unpaid the landlord's December 5, 2011, 10 Day Notice to End Tenancy for Unpaid Rent is in full force and effect.

The landlord per section 55 of the Residential Tenancy Act verbally requested an order of possession for the rental unit with an order of possession date of December 31, 2011. The landlord also stated that he is willing to work with the tenant and if the December and January rent are paid the landlord is willing to allow the tenancy to continue.

Conclusion

I hereby grant the landlord an **Order of Possession** effective not later than **1:00 PM, December 31, 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: December 21, 2011

Residential Tenancy Branch