



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNDC, FF

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, compensation for damage, loss and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The application was amended to remove the landlord's caretaker as a respondent as she is a caretaker and was not included on the 10 Day Notice issued to the tenant or on the tenancy agreement.

Neither party submitted a copy of the 10 Day Notice Ending Tenancy issued on February 8, 2012. The form and contents of the Notice were confirmed with each party during the hearing.

The tenant submitted 38 pages of evidence just hours prior to the hearing; the evidence was not given to the landlord. Therefore, as the evidence was not served to the respondent and not given to the Residential Tenancy Branch at least 5 days prior to the hearing; the evidence was set aside.

The tenant indicated several matters of dispute on his application and confirmed that the main issue to deal with during this proceeding was the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to set aside or cancel the Notice to End Tenancy for Unpaid Rent and I dismissed the balance of the tenant's claim with liberty to re-apply.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on February 8, 2012 be cancelled?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on December 1, 2011; the tenant stated he took possession of the unit on December 13, 2011. Rent was \$800.00 due on the first day of each month, a deposit in the sum of \$400.00 was paid. The parties also entered into a separate employment agreement, which appeared to be in dispute.

The tenant confirmed receipt of a Ten (10) Day Notice to End Tenancy for non-payment of Rent, on February 9, 2012, which had an effective date of February 22, 2012; the Notice was posted to his door.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,225.00 rent within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant stated that he applied to cancel the Notice on February 14, 2012 and did not apply for more time to cancel the Notice. The tenant stated he did not have money to apply.

The tenant confirmed that February rent and March, 2012, rent have not been paid.

The landlord stated they want the tenant out of the unit.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenant received the Notice to End Tenancy on February 9, 2012, the day he removed it from the door.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on February 22, 2012, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for

Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights, therefore; pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended.

I have rejected the tenant's submission that he applied to cancel the Notice on February 14, 2012; the evidence before me shows that the application was made on February 17, 2012; the date the tenant paid for the application; 7 days after the tenant received the Notice. Rent has not been paid for February or March; although a final calculation has not been confirmed.

As the landlord has requested possession of the rental unit and I have determined that the Notice is of full force and effect, I find that the landlord is entitled to an Order of possession effective 2 days after service to the tenant.

Conclusion

The tenant's Application for Dispute Resolution cancelling the Notice is dismissed without leave and, based upon the oral request of the landlord I have issued an Order of possession to the landlord; pursuant to section 55(1) of the Act that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The tenant's claim for compensation was severed from the application and the tenant has leave to reapply on that portion of 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: March 12, 2012.

Residential Tenancy Branch