



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT, CNR, DRI, AS

Introduction

This hearing was scheduled in response to the tenant's application for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy for unpaid rent / to dispute an additional rent increase / and for permission to assign or sublet because the landlord's permission has been unreasonably withheld. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the tenancy began on June 1, 2007. Monthly rent at the start of tenancy was \$1,700.00, and rent is payable in advance on the first day of each month. A security deposit of \$350.00 was collected. Pursuant to the landlord's issuance of a 3 month notice of rent increase, rent increased to \$1,739.00 approximately 1 year ago. The landlord recently issued another 3 month notice of rent increase to be effective later this year.

The landlord issued a 10 day notice to end tenancy for unpaid rent dated February 21, 2012. The notice was served by way of posting on the tenant's door on that same date. A copy of the notice is not before me in evidence. Subsequently, the tenant agrees that no further payments have been made toward rent, and he presently continues to reside in the unit. The tenant filed his application to dispute the notice on February 27, 2012.

The landlord also issued a 1 month notice to end tenancy for cause dated February 21, 2012. The notice was served by way of posting on the tenant's door on that same date. A copy of the notice is not before me in evidence. The reason identified for issuance of the notice is that the tenant is repeatedly late in payment of rent. The landlord testified that the pattern of late payment of rent extends back as far as early to mid 2011. While

the tenant has applied for more time to make an application to cancel a notice to end tenancy, he testified that he has now made arrangements for new accommodation into which he plans to move on or about March 16, 2012.

During the hearing the landlord orally confirmed the wish to seek an order of possession as a result of the issuance of the above 2 notices.

As to the matter of permission to assign or sublet, it is understood that there has not been any formal written exchange between the parties in regard to this matter.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

While the tenant has applied to have the 10 day notice set aside, he has not applied to have the 1 month notice set aside. In regard to the 10 day notice, as it was posted on the tenant's door on February 21, 2012, it is deemed to have been received 3 days later on February 24, 2012. Since the tenant's application to dispute the notice was filed on February 27, 2012, I find that his application was filed within the 5 day period available for doing same. However, as the tenant acknowledges that no rent whatsoever has been paid subsequent to his receipt of the notice, I find that the landlord has established entitlement to an order of possession. In this regard, section 55 of the Act which speaks to **Order of possession for the landlord**, provides in part:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

As the landlord has established entitlement to an order of possession pursuant to the 10 day notice, and as the tenant has testified that he plans to vacate the unit within the next several days, I find there is no need for me to consider the tenant's application for more time to make an application to cancel a notice to end tenancy for cause, and this aspect of the application is, therefore, hereby dismissed.

As the tenant's application to dispute an additional rent increase concerns what was a rent increase to be effective later this year, and as the tenant plans to vacate the unit in advance of the effective date of the notice, I find there is no need for me to consider this aspect of the application and it is, therefore, hereby dismissed. For the information of the parties, Part 3 of the Act (sections 40, 41, 42 and 43) speaks to **What Rent Increases Are Allowed**, and Part 4 of the Regulation (sections 22 & 23) addresses **Rent Increases**.

In relation to the matter of assignment or sublet, once again, as the tenant plans soon to vacate the unit, I find there is no need for me to consider this matter further and this aspect of the application is, therefore, hereby dismissed. For the information of the parties, attention is drawn to section 34 of the Act which addresses **Assignment and subletting**.

In regard to the disposition of unpaid rent, the landlord has the option of filing an application for dispute resolution seeking a monetary order as compensation for same.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. 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.

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 14, 2012.

Residential Tenancy Branch