



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, FF

Introduction

This hearing was convened in response to an application by the tenant filed on April 05, 2012 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. To cancel a Notice to End Tenancy for Unpaid Rent – Section 46
2. Recover the filing fee for this application – Section 72

The landlord orally requested an Order of Possession.

Both parties attended the hearing and were given opportunity to present all relevant evidence and testimony in respect to the claim and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Each party acknowledge receipt of the other's evidence. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the Notice to End Tenancy valid?

Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties' undisputed evidence is that the tenancy started August 01, 2009, and the monthly rent payable in this tenancy is \$600, payable in advance on the first day of each month. The landlord claims the tenant did not pay any rent for April 2012. The tenant claims they paid the landlord \$600 in cash on March 26, 2012 for April 2012 rent. On April 04, 2012 the landlord served the tenant with a Notice to End Tenancy (NTE) for non-payment of rent with an effective date of February 14, 2012. Both parties submitted an abundance of evidence.

The tenant provided and testified that:

- They have always paid the rent in cash, but the landlord has never issued a receipt for cash payments of rent.
- On March 26, 2012 they paid the landlord \$600 in cash comprised of 6 x \$100 denomination bills, which the tenant testified they withdrew the cash from a ScotiaBank ATM machine, which they then used to pay the rent. The tenant also later testified that they accumulated the rent throughout the month from both himself and his wife, having only to withdraw \$500 from an ATM machine in \$20 denominations to pay the rent. The tenant did not provide any document evidence to support this testimony.
- The tenant provides a letter purportedly signed by the tenant's wife stating she witnessed the husband pay the landlord the rent on March 26, 2012. The tenant's wife did not appear into the conference call to support this letter or contribute to its veracity.
- The tenant provided a letter from the landlord dated March 26, 2012 confirming that the tenant has been paying rent on time from the outset of the tenancy until March 26, 2012. The tenant claims they paid the landlord the rent for April 2012 on the same day.
- Despite the foregoing, the tenant gave the landlord a letter on April 05, 2012 requesting a receipt for each month rent was paid from the outset of the tenancy to April 05, 2012.

The landlord provided and testified that:

- The tenant has always paid rent in cash, but never has done so prior to the 1st. of any month. The landlord testified they have not previously issued a receipt, but provided a global receipt up to and including all rent paid from August 2009 to March 26, 2012. The tenant did not pay any money on March 26, 2012 and has not paid any money since.
- The tenant has not paid any rent by any method for the month of April 2012.
- In the past, the tenant has always paid cash on the 1st. to the 3rd. of any given month. After the tenant did not pay by the 3rd. of the month the landlord determined to issue the tenant a Notice to End.

- The landlord provided some favourable written character references from various sources – personal and business.

Analysis

Based on the testimony of both parties, and on the preponderance of the evidence, I have reached a decision.

There is a dispute between the parties with respect to most of the facts at issue, and in respect to *all of the relevant facts* at issue: *whether the rent has, or has not been paid*. Most of the differences are not able to be resolved with reference to the documentation submitted by either party or that were not authored by the parties themselves. I found the testimony of the landlord to be generally credible and reliable. Their evidence was generally consistent with all of their documents, and they readily provided praise of the tenant in testimony and in writing. Their account of the circumstances presented was plausible.

I did not form the same view of the tenant's evidence and testimony. Their testimony was partly evasive, and contained inconsistencies and gave the impression of being contrived and not credible. Some of the testimony was not plausible – in particular – the tenant's testimony respecting the withdrawal of cash in 6 x \$100 denominations from an Automated Teller Machine, which such machines are not known to do, then changing their testimony to only withdrawing \$500 in \$20 denominations. In summary, I found their evidence to be neither credible nor reliable and I therefore did not form a favorable impression of the tenant's evidence.

As a result of all the foregoing, I find that I prefer the evidence of the landlord over that of the tenant. In so doing, I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find that notice to be valid. The tenant has not paid the outstanding rent, and despite their application to dispute the notice to end, they have no acceptable evidence upon which to dispute the landlord's entitlement to the rent or that the rent has been paid. As a result, the tenant's application to Cancel the Notice to End for unpaid rent dated April 04, 2012 **is hereby dismissed** – and the landlord's Notice is upheld. Section 55 of the Act, in part, states as follows: **(emphasis for ease)**

Order of possession for the landlord

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.

Based on the above facts I find that the landlord is entitled to an **Order of Possession**.

Conclusion

I grant an Order of Possession to the landlord **effective 2 days from the day it is served upon the tenant**. The landlord is being given this order. The tenant must be served with this 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.

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: April 24, 2012

Residential Tenancy Branch