



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT, CNC, CNR, OLC, RP

Introduction

This hearing concerns the tenant's application for more time to make an application to cancel a notice to end tenancy / cancellation of two different notices to end tenancy / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / and an order instructing the landlord to make repairs for health or safety reasons. 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 month-to-month tenancy began on December 1, 2011. Monthly rent of \$850.00 is due and payable in advance on the first day of each month, and a security deposit of \$425.00 was collected.

The landlord issued a 10 day notice to end tenancy for unpaid rent dated May 2, 2012. The notice was sent by registered mail on May 3, 2012. Pursuant to section 90 of the Act which speaks to **When documents are considered to have been received**, the notice is deemed to have been received five (5) days later on May 8, 2012. As the time limit available to the tenant to apply to dispute the notice is five (5) days after being served, the last day available to the tenant was May 14, 2012, as May 13, 2012 was a Sunday. Indeed, as the tenant filed her application on May 14, 2012, there is no requirement that she apply for more time to make an application to cancel the 10 day notice.

A copy of the notice was submitted in evidence, and it reflects that rent in the amount of \$425.00 remained overdue on April 1, 2012. Thereafter, payment made toward rent

was limited to \$425.00 on or about May 1, 2012. No rent has been paid for June 2012 and the tenant continues to reside in the unit.

During the hearing the landlord confirmed her wish to obtain an order of possession in the event the tenant's application to have the notice set aside is not successful.

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

Section 46 of the Act addresses **Landlord's notice: non-payment of rent**, and provides in part:

46(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Based on the documentary evidence and testimony, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated May 2, 2012. While the tenant filed an application to dispute the notice within 5 days of being served, she did not pay the full amount of overdue rent within 5 days of receiving the notice. Accordingly, I find that the landlord's notice is upheld.

Section 55 of the Act addresses **Order of possession for the landlord**, and provides in part as follows:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end 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.

Further to all of the above and pursuant to the landlord's oral request made during the hearing, I find that the landlord is entitled to an order of possession.

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.

Following from all of the above, the tenant's application is hereby dismissed in its entirety.

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: June 6, 2012.

Residential Tenancy Branch