



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenants have applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent.

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.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on June 13, 2012 be cancelled?

Background and Evidence

The tenant confirmed receipt of the 10 Day Notice which was delivered by a process server on June 16, 2012.

The 10 Day Notice to End Tenancy for Unpaid Rent had an effective move out date of June 30, 2012.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$47,500.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants could file an application to dispute the Notice within 5 days of receipt.

On June 21, 2012, the tenants filed to dispute the Notice.

The tenants do not dispute that rent is owed to the landlord. The tenants are facing personal circumstances that have created difficulty with an immediate move from the rental unit.

The tenant's agent said that only the first page of the 10 Day Notice was given to the tenants. It was not until a call was placed to the Residential Tenancy Branch that the tenants realized they were required to dispute the notice. The tenants were able to dispute the Notice within the time-frame set out in the Act; however they find it prejudicial that the landlord failed to provide both pages of the Notice.

The landlord's legal counsel stated that the process server swore an affidavit that the 10 Day notice was served to the tenants. The tenants have not been prejudiced because they were able to dispute the Notice within the required time-frame.

A copy of the affidavit of service was requested. A review of the affidavit showed that the package served to the tenants included a copy of the 10 Day Notice to End Tenancy, the copy of which was single-sided.

The landlord and tenant agreed that this is a fixed term tenancy that requires the tenants to vacate the unit on July 31, 2012. The landlord wishes to have the tenants vacate the unit as soon as possible.

The tenant's agent agreed the home must be vacated; he was seeking additional time to do so.

The landlord has submitted a Notice of Civil claim to the Supreme Court of British Columbia, for rent due; in an amount exceeding the limit provided under the Residential Tenancy Act.

Analysis

I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on June 30, 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. Despite the tenant's submission that they did not receive the 2nd page of the Notice, the tenants took the steps required to dispute the Notice within 5 days of receipt of the Notice.

Section 52 of the Act provides:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

I have reviewed the affidavit of service package, supplied upon my request, and find that the package included a copy of the 2 page 10 Day Notice to End Tenancy for Unpaid Rent. The sworn affidavit of service indicated that the copy of the Notice, marked as Exhibit "B", was personally given to the male tenant on June 16, 2012, at 7:38 p.m.

Therefore, I find, on the balance of probabilities, that the tenants did receive the Notice, in the approved form. The tenants were able to dispute the Notice within the required time permitted and attended the hearing to confirm that the landlord is owed rent.

I have rejected the tenant's submission that the Notice should be cancelled as they did not receive the 2nd page of the Notice. Even if the 2nd page had not been served to the tenants, the tenants took the steps required to dispute the Notice; instructions that are given on the 1st page of the Notice.

I find that the tenant's application to dispute the Notice is without any merit, as they agree rent is owed and acknowledged that the tenancy must end. The tenants have utilized the dispute resolution process as a means to delay what they acknowledge is an inevitable end of the tenancy as the result of a failure to pay rent that is due.

Therefore, as there is no dispute that rent is owed to the landlord I find that the Notice issued on June 13, 2012, in the approved form, is of full force and effect.

As the landlord indicated they wished to obtain possession of the unit as quickly as possible, I find, pursuant to section 55(1) of the Act, that the landlord is entitled to an Order of possession effective 2 days after service to the tenants.

Conclusion

The tenant's application is dismissed.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenants**. This Order may be served on the tenants, filed with 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: July 13, 2012.

Residential Tenancy Branch