



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR / OPR

Introduction

This hearing concerns the tenant's application for cancellation of a notice to end tenancy. Both parties participated in the hearing and gave affirmed testimony. During the hearing the landlord requested an order of possession in the event the tenant's application does not succeed.

Issue(s) to be Decided

Whether either party is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the original term of tenancy was from March 1, 2010 to March 1, 2011. Thereafter, tenancy has continued on a month-to-month basis. Monthly rent is currently \$825.00, and it is due and payable in advance on the first day of each month. A security deposit of \$400.00 and a pet damage deposit of \$400.00 were both collected. A move-in condition inspection report was completed with the participation of both parties at the start of tenancy.

Arising from rent which remained overdue on June 1, 2012 in the amount of \$825.00, the landlord issued a 10 day notice to end tenancy for unpaid rent dated June 25, 2012. A copy of the notice was submitted in evidence. Included in the amount of rent shown on the notice as overdue, are two \$25.00 fees (total on the notice: \$875.00); one fee has been assessed for late payment of rent, and the other fee has been assessed for an NSF cheque. The notice was personally served on the tenant on that same date, June 25, 2012. The date shown on the notice by when the tenant must vacate the unit is July 5, 2012. Subsequently, the tenant filed an application to dispute the notice on June 28, 2012. On or about July 12, 2012, the tenant paid the landlord \$825.00 for June's rent. However, the tenant has made no payment for July's rent and she continues to reside in the unit.

Analysis

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

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.

Section 46(4)(a) of the Act states:

46(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or...

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 June 25, 2012. While the tenant filed an application to dispute the notice within the 5 day period available for doing same, the tenant did not pay the full amount of overdue rent within 5 days of receiving the notice.

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 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.

Following from all of the above, I find that the landlord has established entitlement to an order of possession, and the tenant's application is, therefore, hereby dismissed.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service of the order 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: July 18, 2012.

Residential Tenancy Branch