



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, OPC
Tenant: CNR, CNC, etc.

Introduction

This matter dealt with an application by the Landlord for an Order of Possession. The Tenant applied for all but six items of relief available on the Tenant's form of the Application for Dispute Resolution Application including a claim to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 8, 2012 and a One Month Notice to End Tenancy for Cause dated August 29, 2012. At the beginning of the hearing, however, the Tenant said that he had not served his application on the Landlord and as a result it is dismissed on the terms set out in the Conclusions section of this decision.

At the beginning of the hearing, the Tenant also argued that the Landlord had not inserted his correct surname on the Landlord's application. The Landlord claimed that the Tenant advised him that he used five different surnames and that at present he was using the one that appears both on his application and the Notices to End Tenancy. The Tenant consented to amending the Landlord's application to include the surname he claims is his proper surname.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started in October 2011. The rental property is one half of a duplex. The Landlord resides in the adjoining half duplex. Rent was \$1,075.00 per month due in advance on the 7th day of each month plus utilities. At the beginning of the tenancy there were three tenants (including the Tenant in this matter) occupying the rental property under one tenancy agreement. At the end of August 2012, two of the tenants of the rental property ended their tenancy upon giving the required written notice to the Landlord. The Landlord said he agreed to continue the tenancy with the Tenant upon the same terms and consented to the Tenant getting new roommates however no new roommates were found.

The Tenant said that at the end of August 2012, the Landlord agreed to reduce his rent until he could find new roommates however he was not clear on what the amount of the reduced rent was supposed to be. On August 29, 2012 the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause. On September 17, 2012, the Landlord served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 8, 2012 with a witness present. The Tenant admitted that he received this Notice and that as alleged in the Notice, rent for September 2012 was unpaid. The Parties also agree that the Tenant has not paid rent for October 2012.

The Landlord said the Tenant told him that he would move out by October 7th or 8th, 2012. The Landlord also said, he had not seen the Tenant on the rental property for approximately a week commencing October 7th and on one evening, he discovered that an intruder had gained entry through the unlocked back door of the rental unit so he changed the locks. The Landlord said he believed the Tenant had abandoned the rental unit so he removed the Tenant's belongings and put them in a commercial garbage bin. The Landlord said he was going to dispose of the Tenant's belongings but claimed that the bin containing the Tenant's belongings was still on the rental property.

The Tenant argued that the Landlord had no reason to believe that he had abandoned the rental unit but admitted that he was in the process of moving and had made plans to have a cube van collect his. The Tenant claimed that it would not be possible for him to put all of the belongings from the bin into the van and suggested that the van might not now be available in any event. The Tenant also sought access to the rental unit. The Landlord argued that there was no reason for the Tenant to go back into the rental unit because all of his belongings had been removed and he needed to prepare it to re-rent.

Analysis

Section 46(4) of the Act states that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Tenant was served in person on September 17, 2012 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 8, 2012. I find that the Tenant has not paid any rent for September 2012 and given that he did not serve his application for dispute resolution on the Landlord (as is required by s. 59 and s. 89 of the Act), I also find that he has not applied to cancel this Notice. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant.

The Tenant argued that the 10 Day Notice was invalid because it contained the incorrect surname for him. However, I find on a balance of probabilities that the Tenant probably did use the surname that appears on the 10 Day Notice. In particular, I find that the Tenant initially signed his Application for Dispute Resolution using the surname that appears on the 10 Day Notice and then struck it out and used another instead. Furthermore, s. 68 of the Act says that the Director may amend incorrect information on a Notice to End Tenancy if satisfied that the person receiving the Notice new or should have known the information that was incorrect. I also find that the Tenant knew or should have known that the 10 Day Notice to End Tenancy dated September 8, 2012 referred to him given that there were no other tenants residing in the rental unit at that time and given further that he applied to cancel it. As a result, the Notice is amended to include the additional surname used by the Tenant (as an alias).

As a further result, I find that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 8, 2012 is a valid and enforceable Notice under s. 52 of the Act and that the Landlord is entitled pursuant to s. 55(2)(b) of the Act to an Order of Possession to take effect 2 days after service of it on the Tenant.

Section 63(2) of the Act says that *"if the parties settle their dispute during the dispute resolution proceedings, the director may record the settlement in the form of a decision or order."* I find that the Parties agreed to settle part of their dispute on the following terms:

1. The Tenant will attend the rental property at 4 p.m. on October 17, 2012 for the purpose of advising the Landlord where to have the commercial bin containing his belongings delivered to (at the Landlord's expense); and
2. Upon delivery of the commercial bin to the property identified by the Tenant, the Tenant will have 48 hours to remove his belongings and after this time, any articles remaining in the bin will be taken to the land fill for disposal.

Conclusion

An Order of Possession to take effect 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia. The Tenant's application for compensation is dismissed with leave to reapply and the balance of his application is dismissed without leave to reapply. 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: October 17, 2012.

Residential Tenancy Branch