



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: CNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated October 7, 2012 and effective October 17, 2012.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy for Unpaid Rent be cancelled?

The burden of proof is on the landlord to justify the Notice.

Background and Evidence

Submitted into evidence by the applicant/tenant in support the application was, a copy of the Ten-Day Notice to End Tenancy dated October 7, 2012. Other evidence including copies of communications, proof of service and a copy of the tenancy agreement, had also been submitted to the Residential Tenancy Branch.

The month-to-month tenancy began in May 2012 with rent of \$1,275.00 and a security deposit of \$637.50 was paid.

The landlord testified that the tenant fell into arrears in the rent dating back to May 2012 and then failed to pay the rent owed for the month of October 2012, properly due on October 1, 2012. The landlord testified that a Ten Day Notice to End Tenancy for Unpaid Rent was issued and served on the tenant on October 7, 2012. The landlord testified that the arrears were not paid within five days to cancel the notice and in fact were never paid at all. The landlord testified that the rent for November 2012 was also owed.

The tenant acknowledged receiving the Ten Day Notice to End Tenancy for Unpaid Rent and the tenant acknowledged that the rent was not paid.

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Given the testimony of the parties, I find that the tenant did not pay the rent when rent was due nor did the tenant pay the arrears within 5 days of receiving the Notice to End Tenancy for Unpaid Rent. I find that, under the Act, the tenant did not have a right to withhold the rent. Accordingly, I must dismiss the tenant's application requesting an order to cancel the Ten-Day Notice.

During the hearing the landlord made a request for an order of possession and a monetary order for the rent owed. Under the provisions of section 55(1) of the Act, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy.

However, I find that, under the Act, the landlord's request for a monetary order cannot be considered as this hearing was convened to consider the tenant's application and the landlord did not make a cross application seeking an order for monetary compensation for rental arrears. The landlord is still at liberty to pursue the compensation through his own application.

Based on the testimony and evidence discussed above, I hereby issue an Order of Possession in favour of the landlord, effective two days after service to the tenant. The tenant must be served with the 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.

Conclusion

The tenant's application is dismissed without leave to reapply and the landlord is granted an order of possession.

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: November 15, 2012.

Residential Tenancy Branch