



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR and FF

Introduction

This application was brought by the tenant on October 22, 2012 seeking to have set aside a 10-day Notice to End Tenancy for unpaid rent dated October 21, 2012.

Issue(s) to be Decided

This application requires a decision on whether the Notice to End Tenancy should be set aside or upheld.

Background and Evidence

This tenancy began on September 1, 2012. There is no written rental agreement and the parties disagree on the rent with the tenant stating it is \$450 per month and the landlord stating it is \$500 per month.

This tenancy began when the tenant, who had been working for the landlord as a security guard on a nearby construction site, injured his knee and was no longer able to remain in the recreation vehicle he had been staying in on the construction site. The landlord stated that he had arranged for the tenancy in a property owned by a friend who is now representing as her agent.

The parties are in dispute over wages the tenant claims are owed to him by the agent and the tenant stated that has made a formal application with the Employment Standards Branch.

The tenant stated that he has paid no rent since September 2012 and has now occupied the rental unit for nearly three months without paying rent.

Analysis

Section 26 of the *Act* provides that rent must be paid on time. If it is not, section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, while the tenant has made application, he concurred that he has not paid rent due to the pending outcome of the Employment Standards filing. Under such circumstances, I cannot set aside the Notice to End Tenancy.

On hearing that determination, the landlord did not expressly request an Order of Possession under section 55(1) of the *Act*, but he did come to a mutual agreement with the tenant that the tenancy would end on December 10, 2012.

The tenant stated that he understood and agreed that the mutual agreement would be supported with an enforceable Order of Possession that could result in his eviction if he did not vacate the rental unit as agreed.

The landlord remains at liberty to make application for a Monetary Order for the unpaid rent.

Conclusion

The Notice to End Tenancy dated October 21, 2012 is upheld and the tenants' application is dismissed without leave to reapply.

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on December 10, 2012.

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 26, 2012.
