



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 November 23, 2012 seeking to have set aside a Notice to End Tenancy for unpaid rent served on November 20, 2012 and to recover the filing fee for this proceeding from the landlord.

Issue(s) to be Decided

Should the Notice to End Tenancy be set aside or upheld?

Background and Evidence

This tenancy began on or about January 1, 2012. Rent is \$886 per month and the landlord holds a security deposit of \$425 paid at the beginning of the tenancy.

During the hearing, the tenant concurred that the rent due on November 1, 2012 remains unpaid and in the interim, she has not been able to pay the rent due on December 1, 2012 and January 1, 2013.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

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, I find that while the tenant did make timely application to contest the notice of November 20, 2012, she did not pay the rent within five days of receiving it.

Therefore, I find that the Notice to End Tenancy is lawful and valid. I cannot set it aside and the application is dismissed without leave to reapply..

On hearing that determination, the landlord requested an Order of Possession under section 55(1) of the *Act* which compels the issuance of the order on the landlord's oral request when an application to set aside a notice to end tenancy is dismissed and the notice is upheld.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant.

The landlord remains at liberty to make application for a monetary award for the unpaid rent and any further losses as may be ascertained when he has regained possession of the rental unit.

Conclusion

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 two days from service of it on the tenants.

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: January 03, 2013.



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order*
(Please Note: Legislated deadlines apply)

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca