



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This application was brought by the tenant on December 10, 2012 seeking to have set aside a 10-day Notice to End Tenancy for unpaid rent served on December 6, 2012.

Issue(s) to be Decided

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

Background and Evidence

This tenancy began on November 15, 2012. Rent is \$500 per month, due on the first day of the month, and there is no security deposit.

During the hearing, the parties concurred that the landlord had served the tenant with the 10-day notice to end the tenancy after the tenant had failed to pay the rent due on December 1, 2012.

The parties also agreed that, in the interim, the tenant remains in the rental unit, the December rent remains unpaid and the tenant has not paid the rent for January 2013, though the tenant stated that he would be able to pay the arrears very shortly..

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 December 6, 2012, he did not pay the rent within five days of receiving it. Therefore, I found that the Notice to End Tenancy was lawful and valid. I advised the parties that I could not set it aside and dismissed the application 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 tenant.

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 15, 2013

Residential Tenancy Branch

