



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR. AAT and RR

Introduction

By application of February 4, 2012 the tenant sought to have set aside a Notice to End Tenancy for unpaid rent dated February 1, 2013 and a Notice to End Tenancy for cause dated January 29, 2013. The tenant also sought an order that he and/or guests be allowed access to the rental unit and a reduction in rent for repairs agreed upon but not provided.

Issue(s) to be Decided

Is the tenant entitled to have the notices to end the tenancy set aside and the orders for access and a rent reduction as requested?

Background and Evidence

This tenancy began on November 1, 2012. Rent is \$650 per month, due on the last day of the month, and the landlord holds a security deposit of \$325 paid at the beginning of the tenancy.

During the hearing, the landlord submitted into evidence the 10-day Notice to End Tenancy for unpaid rent dated February 1, 2013 noting that the tenant had failed to pay \$225 rent due on February 1, 2013.

Another notice for unpaid rent dated January 29, 2013 stated that the tenant had failed to pay \$175 rent that had been due on January 15, 2013. That claim is based on a per diem surcharge of for a guest who stayed with the tenant. That charge may well be contestable but was not fully canvassed in the present hearing.

A third notice, a one-month Notice to End Tenancy for cause dated January 29, 2013 sought to end the tenancy citing repeated late payment of rent, allowing an unreasonable number of people in the rental unit, interference with or disturbance of another tenant or the landlord and serious jeopardy of the health or safety or lawful right of another occupant or the landlord.

As to the Notice to End Tenancy for unpaid served on February 1, 2012, the tenant concurred that \$225 of the rent due on January 31, 2013 remained outstanding at the time of the hearing on February 27, 2013.

As to the Notice to End Tenancy for cause served on January 29, 2013, the tenant did not contest the landlord's submission had never been paid on time during the four-month tenancy

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 10-day 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 application to dispute within five days, he has not paid the \$225 outstanding rent.

Section 47(1)(b) provides that a landlord may issue a one month Notice to End Tenancy if a tenant is repeatedly late paying rent, the general threshold for which is three times in the previous 12 months. In the present matter, I accept the evidence of the landlord that the rent has been late for each of the four months of the tenancy.

Therefore, I found that the notices to end the tenancy for both unpaid rent and repeated late payment of rent were lawful and valid and that I could not either aside.

On hearing that determination, the landlord requested and I find he is entitled to an Order of Possession to take effect two days from service of it on the tenant. Section 55(1) of the *Act* compels the issuance of the order if a tenant's application to set a notice to end tenancy aside is dismissed and the notice is upheld.

Having found that the tenancy is ending on the issue of unpaid rent and late rent, I find that the balance of the tenant's application is moot and that it is not necessary to canvass the other causes cited in the one-month notice.

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: February 27, 2013

Residential Tenancy Branch

