



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, FF
Tenant: MT, CNR, OPT

Introduction

This hearing dealt with cross Applications for Dispute Resolution with the landlord seeking an order of possession and a monetary order and the tenant seeking an order of possession and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

At the outset of the hearing the tenant confirmed he has possession of the rental unit and only seeks an order of possession to have the landlord's notice to end the tenancy cancelled. I confirmed that since he has possession of the unit there is no need to obtain an order of possession. I amend the tenant's Application to exclude this matter.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to more time to apply to cancel a notice to end tenancy and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to Sections 46 and 66 of the *Act*.

Background and Evidence

The parties agree the tenant had been renting a room from another tenant who had given his notice to end the tenancy at the end of November 2012 and that these parties entered into a rental agreement for \$500.00 due on the 1st of each month beginning on December 1, 2012. The landlord asserts the tenancy was to be for December 2012 and January 2013 only. The tenant asserts the tenancy was to be month to month.

The parties agreed the tenant has not paid rent for the months of January and February 2013.

The landlord submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on January 8, 2013 with an effective vacancy date of January 18, 2013 due to \$500.000 in unpaid rent into evidence.

Documentary evidence filed and testimony provided by the landlord indicates the tenant failed to pay the full rent owed for the months of January and February 2013 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent personally on January 8, 2013. The tenant testified the landlord served him the Notice to End Tenancy on January 14, 2013.

The tenant testified that he did not pay rent because the landlord had not provided internet access and that he failed to provide electricity and heat.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full but applied to dispute the Notice to End Tenancy on January 21, 2013.

Analysis

I have reviewed all documentary evidence and testimony and accept that the tenant has been served with notice to end tenancy. As the parties both dispute the actual date it was served and neither party provided any witness testimony to corroborate when it was served, I find the notice was served by the landlord and received by the tenant at least by January 14, 2013.

As such, the tenant had until January 19, 2013 to file his Application for Dispute Resolution to cancel the Notice. As the Residential Tenancy Branch was closed over the weekend, the tenant is entitled to file his Application no later than January 21, 2013 and therefore, I find the time filed his Application within the 5 day deadline and does not require more time to Apply.

Section 26 stipulates that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

The tenant has provided no evidence that he had paid for emergency repairs and sought compensation from the landlord or that he had an order from an Arbitrator allowing him to deduct any amount of rent. As such, I find the tenant has provided no evidence that he had a right under the *Act* to deduct any rent.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

As a result, regardless of the tenant's reasons for not paying rent, I find that since he has provided no evidence that he had a right under the *Act* to deduct any amount of rent the tenant had no right to withhold rent and the landlord is entitled to end the tenancy, in accordance with Section 46.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,050.00** comprised of \$1,000.00 rent owed and the \$50.00 filing fee paid by the landlord for his Application for Dispute Resolution.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court

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 12, 2013

Residential Tenancy Branch