



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

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

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in his Application.

During the hearing the tenant noted that the second bedroom had been locked and he was unable to access it at all. The landlord disputed that the door was locked but I had the tenant check the door during the hearing and he confirmed it was locked. While this was not part of the tenant's Application I ordered the landlord to ensure the door was unlocked and that the door on the bedroom be made so that it would not lock in future.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to an order to have the landlord allow the tenant to have a roommate, pursuant to Sections 34 and 46 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on February 23, 2013 as a month to month tenancy for a monthly rent of \$600.00 due on the 1st of each month with a security deposit of \$300.00 paid.

The tenant submits that he had rented the unit on the condition that he would be able to rent the extra bedroom in order to cover the rent. The tenant submits that he has had three potential roommates try to rent the room and the landlord has disallowed all of them.

The tenant submits the landlord would not agree with the:

- first person because he was income assistance and the landlord stated he would not have another income assistance person renting;
- second person because the landlord alleged that she was a prostitute; and
- third person the landlord would not allow him onto the property at all.

The landlord submits that he had not disallowed anyone from being a room except for the female who he states the tenant never sought permission from the landlord to allow her to stay there and after police involvement he made the female move out of the rental unit.

The tenant submits that as a result he was unable to pay the landlord with the rent for the month of March 2013 when it was due and he paid the landlord \$300.00. The parties agree the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on March 10, 2013 with an effective vacancy date of March 15, 2013 citing the tenant owed \$300.00 in unpaid rent.

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 or apply to dispute the Notice to End Tenancy within five days. The parties agree the tenant paid the outstanding rent on March 20, 2013.

The parties also agree the tenant has not yet paid rent for April, 2013.

Analysis

I have reviewed all documentary evidence and accept that the tenant was served with notice to end tenancy as agreed by both parties. The notice was received by the tenant on March 10, 2013 and the effective date of the notice is amended to March 20, 2013, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Regardless of the dispute between the parties regarding the tenant's ability to secure a roommate once the landlord issued the 10 Day Notice the tenant was obligated to pay the outstanding rent within the 5 days because the tenant was the only party named on the tenancy agreement and until such time as a roommate was secured the tenant was the sole party responsible for paying all of the rent according to the tenancy agreement.

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. In the case before me I find the tenant did not have a right under the *Act* to deduct any amount of rent that was due to the landlord.

Based on the foregoing, I find the tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice and must vacate the rental unit in accordance with the notice.

Based on the above, I find it is unnecessary to make any orders to allow the tenant to secure a roommate as the tenancy will not be continuing.

Conclusion

For the reasons noted above, I dismiss this Application in its entirety.

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: April 15, 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