



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, FF / OPR

Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a 10 day notice to end tenancy for unpaid rent / and recovery of the filing fee. Despite scheduling of the hearing in response to the tenant's application, he did not appear.

The landlord and "DM," his property manager attended and gave affirmed testimony. During the hearing the landlord made an oral request for an order of possession in the event the tenant's application does not succeed.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the tenancy began on July 1, 2011. Monthly rent of \$1,180.00 is due and payable in advance on the first day of each month. Neither a security deposit nor a pet damage deposit was collected.

Arising from rent which remained overdue on December 1, 2012, the landlord issued a 10 day notice to end tenancy for unpaid rent dated March 21, 2013. A copy of the notice was submitted in evidence. The landlord testified that the amount of \$3,540.00 shown on the notice reflects unpaid rent for the three month period of October, November and December 2012 (3 x \$1,180.00). The notice was served by way of registered mail. Evidence provided by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "successfully delivered" on April 9, 2013.

Subsequently, while the tenant has thus far paid rent in full for 2013, no portion of the unpaid rent for 2012 as documented on the 10 day notice has been paid.

A copy of the tenant's Notice of Civil Claim filed against the landlord in the Supreme Court of British Columbia in March 2013, was filed by the tenant with the Residential Tenancy Branch as late evidence on May 15, 2013.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and affirmed / undisputed testimony of the landlord and his property manager, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated March 21, 2013. While the tenant filed an application to dispute the notice on April 12, 2013, which is within 5 days after his receipt of the notice on April 9, 2013, the tenant has subsequently paid no portion of the unpaid rent.

Section 26 of the Act speaks to **Rules about payment and non-payment of rent**, in part:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that there is no conclusive evidence before me which confirms that the tenant has a right under the Act to deduct all or a portion of the rent.

Section 55 of the Act addresses **Order of possession for the landlord**, in part:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

Following from all the above, the tenant's application is hereby dismissed, and I find that the landlord has established entitlement to an **order of possession**. Pursuant to the landlord's request, the order of possession is made effective May 25, 2013.

Conclusion

The tenant's application is hereby dismissed.

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Saturday, May 25, 2013**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and 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: May 16, 2013

Residential Tenancy Branch

