



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPT; CNR; FF

Introduction

This Hearing was convened to consider the Tenant's application for an Order of Possession and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

The Tenant stated that the Landlord's agent told him to serve documents by delivering them to his neighbour. He stated that he posted the documents to his neighbour's door. The Landlord's agent acknowledged providing the Tenant with his neighbour's address as an address for service. Section 89 of the Act provides for methods of service of certain documents, including an Application for Dispute Resolution. Section 89 does not allow service by posting to a door; however, the Landlord's agent signed into the Hearing and therefore I am satisfied that the Landlord was sufficiently served for the purposes of the Tenant's Application pursuant to the provisions of Section 71(2)(c) of the Act.

Preliminary Matter

Although on the Tenant's Application the Tenant did not specifically seek to cancel a 10 Day Notice to End Tenancy issued April 5, 2013 (the "Notice"), at the outset of the Hearing it was clear that the Tenant was disputing that the Notice was valid. Therefore, I amended the Tenant's Application to include a request to cancel the Notice.

Issues to be Decided

- Is the Notice a valid notice to end the tenancy?
- Is the Tenant entitled to an Order of Possession of the rental unit?

Background and Evidence

In support of his application, the Tenant provided a copy of the Notice, which he stated he received on April 5, 2013, posted to his door. No other documentary evidence was provided by the Tenant or the Landlord.

The parties agreed that the tenancy began on February 12, 2011, and that the Landlord and the Tenant signed a tenancy agreement. Rent is \$625.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$312.50 at the beginning of the tenancy.

The Tenant stated that he has not paid any rent for two months because the Landlord is not providing repairs to the rental unit. He stated that over the 24 month tenancy:

- there has been no regular maintenance at the rental property;
- the Landlord demands that rent be paid in cash;
- the Tenant has been broken into a few times;
- there was a flood in the apartment upstairs and the Tenant did not have the Landlord's number to call for assistance; and
- there are too many people living in other suites in the rental property.

I asked the Tenant why he didn't file an application earlier on in the 24 month tenancy if he believed the Landlord was not complying with the Act. He stated that he has had "a lot on my plate" over the past couple of years. The Tenant stated that he recognizes that he has to move because the rental unit is no longer what he originally rented.

The Tenant stated that he believed that the rental unit was only worth \$500.00 a month because of all of the issues. He offered to settle with the Landlord on the following terms:

- the Tenant would be allowed to stay in the rental unit rent-free until August 31, 2013; and
- in return, the Tenant would not file an application for rent abatement.

The Landlord's agent declined the Tenant's offer to settle. She submitted that the Tenant signed a contract to pay rent in the amount of \$625.00 on the first day of each month. She stated that the Tenant owed \$125.00 for February rent and \$625.00 for each of the months of March, April and May, 2013. The Landlord's agent asked for an Order of Possession of the rental unit.

Analysis

Section 26 of the Act provides 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 (for example, an Order from the Director allowing a rent reduction). In this case, I find that the Tenant had no such right.

The Tenant's remedy would have been to file an Application for Dispute Resolution prior to stopping payment of rent, seeking an Order from the Director that he could deduct a portion of the rent for repairs, services or facilities agreed upon but not provided, or seek another Monetary Order for compensation for damage or loss. He did not.

I find that the Tenant did not pay rent when it was due, or within 5 days after receipt of the Notice. I find that the Tenant did not have a right under the Act to deduct any rent. **The Tenant's application to cancel the Notice is dismissed.** I find that the Notice is a valid Notice.

Section 55 of the Act states:

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.

Pursuant to the provisions of Section 55(1) of the Act, I hereby provide the Landlord with an Order of Possession.

As the tenancy has ended, the Tenant's application for an Order of Possession of the rental unit is **dismissed**.

Conclusion

The Tenant's application is dismissed in its entirety.

I hereby provide the Landlord with an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This 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 08, 2013

Residential Tenancy Branch