



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0761500 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RR, MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 10 Day Notice To End Tenancy (the “notice”), for a monetary order for money owed or compensation under the Act, to have the landlord make repairs and to allow a tenant to reduce rent for repairs.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the 10 Day Notice to End Tenancy. The balance of the tenant’s application is dismissed, with leave to reapply.

At the outset of the hearing the landlord requested an order of possession.

Issue(s) to be Decided

Should the notice to end tenancy issued on May 2, 2013, be cancelled?

Background and Evidence

Based on the testimony of the parties, I find that the tenant was served with a notice to end tenancy for non-payment of rent issued on May 2, 2013. The tenant made an application for dispute resolution on May 3, 2013.

The parties agreed on March 12, 2013, at a previous dispute resolution hearing the tenant was authorized to withhold the amount of \$160.00 from April 2013, rent.

The tenant testified that he withheld the amount of \$190.00 from May 2013, as he felt he was entitled to do so as he believes the landlord is in breach of the Act. The tenant stated he has not paid the outstanding amount of rent.

The landlord testified the tenant had no authority to withhold rent under the Act from May 2013, rent and seek an order of possession.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

Section 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.

Although the tenant applied to cancel the ten day notice to end tenancy dated issued on May 2, 2013, within the five days granted, I find that there is no merit to the tenant's application. In particular, the tenant admitted that rent was owed when he received the notice and that amount was not paid within the five days required by the Act.

On March 12, 2013, at a dispute resolution hearing the Arbitrator gave the tenant the right to withhold \$160.00 from rent and that was deducted from April, 2013, rent. The tenant was not given permission to withhold any further rent.

In this case, the tenant felt justified in withholding \$190.00 from May 2013, rent, however, the tenant did not have the authority under the Act. I find the tenant breach section 26 when he withheld rent without the authority under the Act.

In light of the above, I dismiss the tenant's application to cancel the notice to end tenancy.

As the tenant's application is dismissed and the landlord requested an order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request.

Section 55(1) of the Act states:

Order of possession for the landlord

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.

As I have dismissed the tenant's application, I find that 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 and may be filed in the Supreme Court.

Conclusion

The tenant's application to cancel the ten day notice to end tenancy is dismissed. The landlord is granted an order of possession

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 22, 2013

Residential Tenancy Branch

