



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CEDAR DALE MANOR
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

CNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony that was properly served.

Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy for Unpaid Rent be cancelled?

Background and Evidence

Submitted into evidence in support the application was, a copy of the Ten-Day Notice to End Tenancy dated April 5, 2013. Other evidence that was submitted to the Residential Tenancy Branch and served on the other party, included a written statement by the landlord.

The tenancy began in 1998 and the current rent is \$598.00.

The landlord testified that the tenant fell into arrears in the rent and by April 5, 2013 had accrued a debt of \$1,794.00 for unpaid rent. The landlord testified that a 10-Day Notice to End Tenancy for Unpaid Rent was served on the tenant by posting it on the door. The landlord testified that the tenant then failed to pay \$598.00 rent owed for the month of May 2013, properly due on May 1, 2013.

The landlord testified that the rent was not paid within the statutory deadline under the Act, of five days, which would have cancelled the Notice and, in fact, was never paid at all.

The tenant acknowledged that the rent was not paid.

Analysis

The burden of proof is on the landlord to justify the Notice.

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, regulations or tenancy agreement, unless the tenant otherwise has a right under this Act to deduct all or a portion of the rent.

Given the testimony of the parties and the evidence before me, I find that the tenant did not pay the rent when rent was due. When a tenant fails to pay the rent on, or before the day it is due, section 46 of the Act permits a landlord to issue and serve a 10-Day Notice to End Tenancy for Unpaid Rent. Under the Act, a tenant can cancel the Notice by paying all of the arrears in full within 5 days of being served with the Notice.

I find that, the evidence shows that the tenant failed to pay all of the arrears within 5 days of receiving the Notice to End Tenancy for Unpaid Rent.

Accordingly, I find that the 10-Day Notice to End Tenancy for Unpaid Rent was valid and I must dismiss the tenant's application requesting an order to cancel the Notice.

During the hearing the landlord made a request for an order of possession. Under the provisions of section 55(1) of the Act, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy.

At the close of the hearing, I advised the landlord that a monetary order would be granted in favour of the landlord for the arrears owed minus the tenant's security deposit. However, this was stated in error as the matter before me is the tenant's application, not an application filed by the landlord. Therefore, it is not possible for me to grant an order for compensation to the respondent landlord.

Based on the testimony and evidence discussed above, I hereby issue an Order of Possession in favour of the landlord, effective two days after service to the tenant.

The tenant must be served with the order of possession. 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.

Conclusion

The tenant's application is dismissed without leave to reapply and 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 07, 2013

Residential Tenancy Branch

