



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Intracorp Maywood Park Limited Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNR, MNDC, ERP, PSF, RR, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), an order requiring the landlord to make emergency repairs, a monetary order for the cost of emergency repairs and a monetary order for money owed or compensation for damage or loss, an order requiring the landlord to provide services or facilities required by law, for an order allowing a reduction in rent, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, when discussing evidence, the landlords said they did not receive the two photographs submitted by the tenant. The tenant could not prove otherwise and I therefore excluded that the tenant's photographic evidence from consideration. The landlord confirmed that they did not submit documentary evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue #1-During the hearing, the tenant suddenly departed the hearing, 21 minutes in. I paused the conference to allow the tenant time to reconnect to the hearing in the event he was having issues with his telephone.

After 9 minutes, the tenant had not returned and I heard a short amount of testimony the landlord was in the process of stating at the time the tenant departed abruptly.

At the time the tenant departed, I had heard enough evidence to make a decision on the tenant's application as to his request for cancellation of the Notice.

Preliminary issue #2- I have determined that the portion of the tenant's application dealing with a request for orders for emergency repairs, a reduction in rent, an order requiring the landlord to provide services or facilities required by law and a monetary order are unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dealt only with the tenant's request seeking cancellation of the Notice. I will address these remaining issues later in this Decision.

The hearing proceeded only upon the tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice and to recover the filing fee?

Background and Evidence

The tenant said that he originally moved into the rental unit 4 years ago with another landlord and that the present landlord bought the rental unit approximately 2 years ago. The undisputed evidence is that the monthly rent is \$1600 and the tenant paid a security deposit of \$800 at the beginning of the original tenancy.

The landlord stated that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent on May 14, 2013, by posting it on the tenant's door. The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

The landlord submitted that they have not received any rent payment from the tenant since the issuance of the Notice and that as of the date of the hearing, the tenant owed outstanding rent of \$3200, for May and June.

The tenant did apply to dispute the Notice, and said that he did not pay rent to get the landlord's attention as to the lack of heat in the rental unit.

The tenant submitted that he had addressed a lack of heat in the rental unit numerous times and that the landlord failed to adequately address the problem.

The tenant also said that since the landlord posted the Notice on the door, his tenants have not paid him rent until the outcome of this hearing; therefore the tenant is not able to pay rent, according to the tenant.

In response, some out of the hearing of the tenant as he had exited the hearing, the landlord said that they immediately called a heating specialist when the tenant called them, and that they ultimately decided that space heaters would resolve the problem.

One of the heaters did not work, and the landlord said that he picked up the heater and said he would get that one replaced.

According to the landlord, the tenant said not to bother as the weather was turning warmer, and since they have not heard from the tenant since April 2 of any further problem, the landlord said they thought the issue had been resolved.

During the hearing, the landlord requested an order of possession for the rental unit.

Analysis

Pursuant to section 26 of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent listed or dispute the Notice within five days. In this case, I find the tenant disputed the Notice within five days. When a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

Upon hearing from the parties, I am satisfied that the tenant owed the landlord rent when the Notice was issued and that he did not pay all or any of the rent owed to the landlord within five days of receiving the Notice. I also find that the tenant did not establish that he had the legal right to withhold the rent owed.

Therefore, I find the tenancy has ended for the tenant's failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I therefore dismiss the tenant's application seeking cancellation of the Notice.

At the landlord's request, I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenant.

Conclusion

The tenant's application seeking cancellation of the 10 Day Notice is dismissed, without leave to reapply.

The portion of the tenant's application seeking a request for orders for emergency repairs, a reduction in rent, and an order requiring the landlord to provide services or facilities required by law is dismissed, without leave to reapply as the tenant is ending as a result of the landlord being issued an order of possession for the rental unit.

The portion of the tenant's application seeking monetary compensation is dismissed, with leave to reapply.

The tenant's request to recover the filing fee is dismissed as I have dismissed his application.

I grant the landlord an order of possession for the rental unit and have enclosed this final, legally binding order of possession with the landlord's Decision.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement may be recoverable from the tenant.

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* and is being mailed to both the applicant and the respondent.

Dated: June 11, 2013

Residential Tenancy Branch

