



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

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").

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

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.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

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-The parties were given instructions at the beginning of the hearing that they were to allow the other party the opportunity to testify without interruption during the hearing. The parties were advised that although they would most likely disagree with everything the other party said, they were to make a note of that disagreement in order to respond during their portion of the hearing.

Despite these instructions, the tenant began interrupting the landlord's testimony almost immediately with comments and remarks.

I cautioned the tenant that the continued interruptions would result in him being placed in the mute mode; however the interruptions continued throughout the hearing, until the tenant was placed on mute, but allowed to listen, while the landlord testified, pursuant to Section 8.7 of the Rules of Procedure.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

Background and Evidence

Neither party submitted a copy of the written tenancy agreement; however both parties agreed that the tenancy began in September 2010.

The parties disagreed on the monthly rent amount, with the tenant saying that the rent was \$850 and the landlord saying that the rent was \$750 and that the tenant was paid \$200 for work done around the property.

The parties disagreed on the amount of the tenant's security deposit.

The landlord's relevant evidence included copies of communication between the parties and a partial copy of 10 Day Notice, date May 6, 2013, listing unpaid rent of \$750 due on May 1, 2013, and an effective move out date of May 17, 2013. In explanation, the landlord had apparently place an adhesive note on top of the Notice when making a copy, with the word "Arbitrator," which blocked out the tenant and the landlord's full names.

I also heard testimony from the landlord, in explanation as to the multiple landlords involved with this tenancy, that he and different family members manage the property at different times of the year.

The landlord stated that the tenant was served a 10 day Notice to End Tenancy for Unpaid Rent on May 6, 2013, via registered mail. 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 although only rent for the month of May was listed on the Notice, the tenant also failed to pay rent for March, April, and now June.

The tenant did apply to dispute the Notice, and said that he did not owe all the rent claimed. The tenant acknowledged that he had not paid rent for those four months, but submitted that he had an agreement with one of the family members, not the one in attendance, that he was to receive two months' free rent for different repair jobs around the property.

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, 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.

In the case before me, although the landlord was unable to provide specific accounting records, after hearing the tenant's confirmation that he has not paid rent since March 2013, 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.

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 is dismissed, without leave to reapply.

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 07, 2013

Residential Tenancy Branch