



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE CITY OF PENTICTON
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for unpaid rent.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on June 21, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

The Tenant requested an adjournment as he now has employment and he will be able to pay the rent in the future. The Landlord said he does not want to adjourn the hearing to another date. As both parties are in attendance and the issue is unpaid rent not the Tenant's employment situation I dismiss the Tenant's request for an adjournment.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on June 1, 2012 as a month to month tenancy. Rent is \$1,000.00 per month payable in advance of the 1st day of each month. The Tenant said the Landlord and the Tenant had an agreement for the Tenant to do work on the rental unit as payment of rent for the months of July and August, 2012. No security deposit was required for this tenancy.

The Landlord said he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated June 17, 2013 for \$5,680.00 in unpaid rent. The Landlord said he served the Notice on June 17, 2013 by posting it on the door of the Tenant's rental unit. The Effective Vacancy date on the Notice is June 17, 2013. The Landlord was informed the Effective Vacancy Date of June 17, 2013 is incorrect and

pursuant to section 53 of the Act an incorrect Effective Vacancy Date is automatically changed to the correct date which in this situation is June 27, 2013.

The Landlord continued to say the Tenant is living in the unit and the Landlord requested an Order of Possession if the Tenant's application is unsuccessful.

The Tenant said he has \$850.00 in unpaid rent not \$5,680.00 as the Landlord says, because the Landlord and he had an agreement that the Tenant would be paid to care take the house and orchard which he has not been paid for. The Tenant did not have any corroborating evidence to support this claim and the Landlord said the agreement was that the Tenant could have the apple crop for maintaining the orchard, but there was no written agreement. The Landlord said the Tenant did not pick the apples in the orchard.

The Tenant continued to say the unpaid rent is not as high as the Landlord says because the Landlord has not processed all his cash payments made for rent. The Tenant said the Municipality has problems in their accounting department and they did not issue him receipts when he paid in cash. The Landlord said the municipality issues receipts for cash payments. The Tenant continued to say that he did not submit any evidence that his cash payments were not processed by the Landlord.

Further the Tenant said that the Landlord is not the owner of the property and therefore did not have the right to issue a Notice to End Tenancy as the Municipality is no longer the Landlord. The Landlord (Municipality) said the city still owns the property and they are still the Landlord, but a sale is pending.

The Tenant said in closing that he believes the Notice to End the Tenancy is unfair for many reasons and he wants to appeal the decision if his application to cancel the Notice to End Tenancy for unpaid rent dated June 17, 2013 is unsuccessful.

The Landlord said there is unpaid rent and he has requested an Order of Possession for as soon as possible because the Landlord wants to end the tenancy because of late and unpaid rent.

Analysis

Section 26(1) of the Act says 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.

Both parties agree there is unpaid rent. The Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due therefore; I find the Tenant has not established grounds to be granted an order to cancel the Notice to End Tenancy. The Landlord's 10 Day Notice to End Tenancy dated June 17, 2013 stands in full effect.

Further, as the Landlord has requested an Order of Possession if the Tenant's application is unsuccessful, I find pursuant to s. 55 of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after the Order is served on the Tenant.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective 2 days after service of the Order on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

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: July 23, 2013

Residential Tenancy Branch