



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, O

Introduction

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

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on July 8, 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.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. What other considerations are there?

Background and Evidence

This tenancy started on February 1, 2013 as a fixed term tenancy for 12 months. Rent is \$800.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$400.00 on February 14, 2013.

The Landlord said he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated July 1, 2013. He served the Notice on July 1, 2013 by posting it on the door of the Tenant's rental unit. The Effective Vacancy date on the Notice was July 11, 2013. The Tenants are living in the unit and the Landlord requested an Order of Possession if the Tenant's application is unsuccessful.

The Tenant said they have unpaid rent of \$800.00 for July, 2013 and \$800.00 of unpaid rent for August, 2013. The Tenant continued to say the Landlord did not accept the rent payment on July 5, 2013 when his roommate tried to pay the rent and they have not paid the August, 2013 rent of \$800.00 because they were waiting for this hearing. The Tenant said they have \$1,600.00 in unpaid rent.

Analysis

Section 26(1) 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.

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 July 1, 2013 stands in effect and consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of the Order 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 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: August 13, 2013

Residential Tenancy Branch