



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OLC RP PSF RR O

Introduction

The tenant applied under the *Residential Tenancy Act* (the “*Act*”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), for an order directing the landlord to comply with the *Act*, to make repairs to the unit, site or property, and provide services or facilities required by law, to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and “other” although details of other were not clearly indicated in the tenant’s application.

The tenant, the landlord and the owner of the property attended the hearing. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me.

The tenant testified that he did not receive the evidence from the landlord prior to the hearing. As a result, the landlord was permitted to speak to his evidence orally during the hearing.

Preliminary and Procedural Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the 10 Day Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant’s request to set aside the 10 Day Notice at this proceeding. The balance of the tenant’s application is **dismissed, with leave to re-apply**.

Issue to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?

Background and Evidence

A verbal month to month tenancy agreement began on February 1, 2012. Monthly rent in the amount of \$1,100.00 was due each month. The landlord stated that the rent was due on the first day of each month, while the tenant stated that rent was due twice per month in two installments of \$550.00. The parties agreed that a security deposit and pet damage deposit was not paid during this tenancy.

The parties agree that a 10 Day Notice dated July 30, 2013 was served in person on the tenant on August 1, 2013. The tenant disputed the 10 Day Notice on August 2, 2013 which is within the required timeline under section 46 of the *Act*. The parties agreed that the \$2,700.00 is listed on the 10 Day Notice as the amount owed by July 1, 2013. The parties also agreed that the listed effective vacancy date on the 10 Day Notice is August 9, 2013. The tenant stated that the landlord agreed he could pay back the rent in installments. The landlord disputed that any such agreement had been made with the tenant and stated that rent was due on the first day of each month and that the tenant owes rent for several months. The landlord verbally requested an order of possession during the hearing.

The tenant testified that he did not pay the \$2,700.00 indicated as owing on the 10 Day Notice, and has not paid, August 2013 rent or September 2013 rent either since filing to dispute the 10 Day Notice. The tenant did not submit any evidence in support of his application.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice to End Tenancy for Unpaid Rent – The tenant testified under oath that he did not pay the \$2,700.00 listed as owing on the 10 Day Notice, and has failed to pay any rent for August 2013 or September 2013 since receiving the 10 Day Notice on August 1, 2013. The effective vacancy date on the 10 Day Notice is listed as August 9, 2013, which automatically corrects under the *Act* to August 10, 2013. The tenant continues to occupy the rental unit.

Section 26 of the *Act* requires that the tenant pay rent on the day that it is due in accordance with the tenancy agreement whether or not the landlord complies with the *Act*. The landlord disputed that any agreement was made with the tenant for the tenant to pay back \$2,700.00 and that the tenant has failed to pay rent for August 2013 and September 2013 also. Therefore, based on the above, **I find** the 10 Day Notice issued by the landlord to be **valid and is upheld** as the tenant failed to pay rent when it was due and admits to not paying rent since being issued the 10 Day Notice. The landlord made a verbal request for an order of possession once the 10 Day Notice was upheld.

Pursuant to section 55 of the *Act*, **I must** grant the landlord an order of possession. Therefore, **I grant** the landlord an order of possession effective two (2) days after service on the tenant. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

I dismiss the tenant's application to cancel the 10 Day Notice as the tenant has confirmed that rent was not paid when it was due as required by section 26 of the *Act* and that he did not pay the amount listed on the 10 Day Notice within 5 days of receiving the Notice.

Conclusion

I dismiss the tenant's application to cancel the 10 Day Notice. I grant the landlord an order of possession effective two (2) days after service on the tenant. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: September 09, 2013

Residential Tenancy Branch

