



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant testified that he received the landlord's 10 Day Notice hand delivered to him on October 7, 2013. The tenant testified that he handed the landlord's husband a copy of the tenant's dispute resolution hearing package on October 12, 2013. The landlord testified that the tenant handed her husband a copy of the tenant's hearing package on October 16, 2013 at 4:45 p.m. I am satisfied that the parties served one another with the above documents and were prepared to present evidence with respect to the tenant's application at this hearing.

The landlord testified that the tenant has not paid rent for many months and requested the issuance of an Order of Possession for unpaid rent if the tenant's application were dismissed.

Neither party submitted any written evidence for this hearing. However, as both parties referred to the landlord's 10 Day Notice, I asked the landlord to fax a copy of this Notice to the Residential Tenancy Branch (the RTB) by the end of the business day if she wished her oral request for an end to this tenancy based on the 10 Day Notice to be considered. The RTB received the landlord's faxed copy of the 10 Day Notice on the afternoon of the day of this hearing.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This periodic tenancy commenced on November 16, 2011. Monthly rent was set at \$1,200.00, payable in advance on the first of each month, plus utilities. The landlord continues to hold the tenant's \$600.00 security deposit and \$600.00 pet damage deposits, paid on November 16, 2011.

The tenant testified that the 10 Day Notice required the tenant to vacate the rental unit by October 15, 2013, unless the tenant paid all of the \$7,650.00 the landlord identified as owing within five days. Although the tenant disagreed with the amount cited in the landlord's 10 Day Notice, the tenant gave sworn testimony that he has not paid any rent to the landlord for the past six months.

Analysis

Based on the tenant's admission that he has not paid any rent to the landlord for the past six months, I find that the tenant is in contravention of his tenancy agreement and the Act. Under these circumstances, I dismiss the tenant's application to cancel the landlord's 10 Day Notice without leave to reapply.

Section 55(1) of the Act reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application to cancel the 10 Day Notice, I find that the landlord is entitled to a 2 day Order of Possession pursuant to section 55(1) of the Act.

Since the tenant has been unsuccessful in this application, I also dismiss the tenant's application to recover his filing fee from the landlord without leave to reapply.

Conclusion

I dismiss the tenant's application without leave to reapply.

At the hearing, the landlord requested an Order of Possession if the tenant's application for cancellation of the Notice to End Tenancy were dismissed. As I have dismissed the tenant's application, the landlord will be given a formal Order of Possession which must be served on the tenant. I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of 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: November 22, 2013

Residential Tenancy Branch

