



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Randall North Real Estate
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNR, MNDC, FF

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 day Notice to end tenancy for unpaid rent, compensation for damage or loss under the Act, to reduce rent for repairs, services or facilities agreed upon but not provided and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant indicated several matters of dispute on his application and confirmed that the main issue to deal with during this proceeding is the Notice to end tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to cancel the 10 day Notice to end tenancy for unpaid rent and I dismissed the balance of the tenant's claim with liberty to re-apply.

Issue(s) to be Decided

Should the 10 day Notice to end tenancy for unpaid rent issued on January 3, 2014 be cancelled?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced 12 years ago; currently rent is \$1,025.00, due on the 1st day of each month.

The tenant confirmed receipt of a 10 day Notice to end tenancy for unpaid rent that was left in his mailbox on January 3, 2014. On January 6, 2014 the tenant applied to dispute the notice. The Notice had an effective date of January 16, 2014.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$35.00 within 5 days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within 5 days.

The tenant said that his water pipes had frozen and that the landlord had indicated he could make a deduction from rent owed. The tenant confirmed that the landlord did not supply him with any written permission allowing a deduction in the sum of \$35.00 from January 2014 rent due.

Email evidence supplied indicated that on January 2, 2014 the landlord warned the tenant that he must pay all of the rent owed, as he did not have an order allowing him to make deductions from the rent. The landlord acknowledged that he had told the tenant they would cover the cost of bottled water; but no sum was agreed to in the email.

The tenant confirmed that he has not paid the outstanding \$35.00.

The landlord requested an Order of possession.

Analysis

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on January 16, 2014, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant disputed the Notice but came to the hearing to confirm he did not pay the outstanding \$35.00 rent.

Therefore, as the tenant has not paid the rent, in full, within 5 days of January 6, 2014, I find that the Notice ending tenancy for unpaid rent issued on January 3, 2014 is of full force and effect. When the tenant failed to pay the rent, in accordance with section 46(5) of the Act, he is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

Therefore, I find that the tenant's application to cancel the Notice is dismissed.

Section 55(1) of the Act provides:

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

Therefore, as the landlord has made a request, pursuant to section 55 of the Act, I find that the landlord is entitled to an Order of possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The tenant's application to cancel the Notice ending tenancy is dismissed.

The monetary portion of the tenant's application is dismissed with leave to reapply.

The landlord is entitled to an Order of possession.

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: February 19, 2014

Residential Tenancy Branch

