



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Yuen Feng Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing was convened to deal with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice").

The two parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the neither party raised any issues regarding service of the application or the evidence.

Thereafter both parties gave affirmed testimony, were provided the opportunity to present their evidence orally up to a point, and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue #1-After both parties had fully testified in support of their respective positions in this matter, and after the landlord requested an order of possession for the rental unit, the tenant asked about the effective date of the order of possession and when he would have to vacate.

I explained the timing of the order of possession and the service requirements of the landlord, at which time the tenant erupted into a barrage of profane language and did not stop. I therefore placed tenant in the mute mode. The tenant was allowed to listen; however, by that time, the hearing on the merits of the tenant's application had concluded, and shortly thereafter I concluded the hearing.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice and to recover the filing fee?

Background and Evidence

Though no tenancy agreement was entered into evidence, the undisputed evidence of the parties was that this tenancy began on July 20, 2013, current monthly rent is \$890, and the tenant paid a security deposit of \$475.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

The landlord stated that the tenant was served with a 10 Day Notices to End Tenancy for Unpaid Rent on January 6, 2014, by leaving it with the tenant, listing unpaid rent of \$890 as of January 1, 2014. The effective move-out date listed was January 15, 2013.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to January 16, 2014, which is 10 days after service of the Notice.

The landlord asserted that since the issuance of the Notice, the tenant has not made any rent payments and now owes for the month of February 2014.

In response, the tenant admitted that he had not paid the rent, due to a situation involving not being paid by his employer.

During the hearing, the landlord requested an order of possession for the rental unit.

Analysis

Pursuant to section 46 of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent listed or dispute the Notice within five days. In this case, I find the tenant disputed the Notice by filing his application; however, when a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

Upon hearing from the parties, I am satisfied that the tenant owed the landlord rent when the Notice was issued and that he did not pay all or any of the rent owed to the landlord within five days of receiving the Notice. I also find that the tenant did not establish that he had the legal right to withhold the rent owed.

Therefore, I find the tenancy has ended for the tenant's failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I therefore dismiss the tenant's application seeking cancellation of the Notice.

At the landlord's request, I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenant, pursuant to section 55(1) of the Act.

Conclusion

The tenant's application seeking cancellation of the 10 Day Notice is dismissed, without leave to reapply.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon her, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is advised that costs of such enforcement are recoverable from the tenant.

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: February 21, 2014

Residential Tenancy Branch

