



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR
 For the landlord: OPR, MNR

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”).

The landlord applied for an order of possession for the rental unit due to unpaid rent and a monetary order for unpaid rent.

At the beginning of the hearing, neither party raised any issue regarding the service of the other’s application or evidence.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties 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.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent and a monetary order for unpaid rent?

Background and Evidence

The undisputed evidence of the parties was that this tenancy began in January 2000 and monthly rent is \$1200, due on the first day of the month.

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

Landlord's application-

The landlord stated that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 4, 2014 by attaching it to the tenant's door, listing unpaid rent of \$9615 accumulated as of March 1, 2014. The effective move-out date listed was March 16, 2014.

The landlord asserted that since the issuance of the Notice, he has not received any further rent payments from the tenant and she now owed rent for April and May.

The landlord referred to a tenant ledger sheet submitted into evidence showing the payments received; additionally, the landlord submitted copies of rent receipts and the Notice.

Tenant's response and application-

The tenant did not dispute the amount claimed as unpaid rent; however the tenant submitted that she has put together an offer to purchase the rental unit.

The tenant further submitted that she would like to continue a payment plan.

Analysis

Landlord's Application:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent, pursuant to section 46 of the Act. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five

days. In this case, I find that the tenant disputed the Notice within business five days; 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.

In the case before me, I find the landlord submitted sufficient oral and documentary evidence that the tenant owed the landlord rent when the Notice was issued and that she did not pay any of the rent owed to the landlord within five days of receiving the Notice.

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

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.

I find the landlord submitted sufficient evidence that the tenant owes the amount of \$9615 for unpaid rent through March 2014.

I therefore find that the landlord is entitled to a monetary award in the amount of \$9615, comprised of outstanding rent through March 2014.

I have dealt with unpaid rent for April and May, as the landlord did not request any amount beyond the month of March; however, the landlord is at liberty to apply for unpaid rent for April and May, if he so chooses.

Tenant's application:

Due to the above, the tenant's application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the 10 Day Notice to End Tenancy issued by the landlord has been supported by the landlord and is therefore valid and enforceable.

Conclusion

The landlord's application has granted.

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 him, 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, such as bailiff costs, are recoverable from the tenant.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$9615, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) 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: May 2, 2014

Residential Tenancy Branch

