



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: MT, CNR
Landlord: OPR, FF - amended

Introduction

This hearing was convened in response to cross - applications by the parties.

The landlord filed their application pursuant to the *Residential Tenancy Act* (the Act) on March 14, 2014 for Orders, *as orally amended in the hearing*, as follows:

1. An Order of Possession pursuant to a 10 Day Notice to End for unpaid rent - Section 55
2. An Order to recover the filing fee for this application - Section 72

The tenant filed pursuant to the Act on April 22, 2014 for Orders as follows:

1. Allow the tenant more time to make an application to cancel a Notice to End Tenancy received on March 07, 2014 – Section 66

and, if granted,

2. To cancel a 10 Day Notice to End for unpaid rent dated March 06, 2014, received March 07, 2014 - Section 46

Both parties appeared in the conference call hearing and participated with their submissions and testimony. The tenant advised they are still residing in the rental unit and do not wish to vacate. The parties were given opportunity to turn minds to compromise in attempt to arrive at an agreed settlement to their dispute, but despite the

parties' attempts this process was unsuccessful. At the end of the hearing both parties acknowledged presenting all of the relevant evidence they wished to present.

Preliminary matters

The tenant applied for *more time* to make an application to cancel the Notice to End. The tenant testified they received the Notice to End on March 07, 2014 and was afforded, by Section 46 of the Act, 5 days to pay the rent or file an application for dispute resolution. As the 10 Day Notice was received March 07, 2014 the effective date of the Notice is the 10 th. day after it's receipt – or March 17, 2014.

Section 66 of the Act states, in relevant part, as follows: (emphasis added)

Director's orders: changing time limits

66 (3) The director **must not extend the time limit** to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

As a result, in this matter, as the tenant made their application to cancel the Notice April 22, 2014, an Arbitrator is *statute barred* – that is, prohibited – from extending the tenant's time to make an application to cancel the 10 Day Notice in this matter, and as a further result the tenant's application must fail, and is effectively **dismissed**.

The hearing proceed on the merits of the landlord's amended application.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit is the lower portion of the residential property. The tenancy started May 01, 2012. Rent in the amount of \$1350.00 is payable by the tenant in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$675.00, which the landlord still holds in trust.

The relevant testimony in this matter is that the tenant agrees that on March 07, 2014 they received a 10 day Notice to End tenancy for unpaid rent dated March 06, 2014, stating that the tenant owed \$600.00 of the payable rent for March 2014. The tenant agrees they did not pay the outstanding amount within the 5 days the tenant was afforded to do so and did not have a basis to dispute the Notice to End as prescribed according to Section 46 of the Act. The tenant paid a portion of the outstanding rent - \$375.00 - on March 19, 2014; which the landlord accepted and provided a receipt stating they were doing so, "*for use and occupancy only*" and were not reinstating the tenancy. The landlord testified that all the outstanding rent was subsequently satisfied on March 27, 2014 and accepted for *use and occupancy only*. The landlord further testified that the rent, inclusive of May 2014 rent, is current.

Analysis

Sections 46 of the Act, in relevant part, states as follows; (emphasis added)

Landlord's notice: non-payment of rent

46 (4) Within 5 days after receiving a notice under this section, the tenant may

- (a) **pay** the overdue rent, in which case the notice has no effect, or
- (b) **dispute** the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) **is conclusively presumed** to have accepted that the tenancy ends on the effective date of the notice, and
- (b) **must** vacate the rental unit to which the notice relates by that date.

In this matter, the tenant was required to pay the rent or file for dispute resolution no later than March 12, 2014. The tenant applied to dispute the Notice but did so well after the time permitted by the Act on April 22, 2014.

Sections 55 of the Act, in relevant part, states as follows;

Order of possession for the landlord

- 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.

In this matter the landlord applied for an Order of Possession and made an oral request for such as well. As I have dismissed the tenant's application, I find that, under Section 55 of the Act, the landlord is entitled to receive an **Order of Possession**. Given that the parties were unable to agree on the tenancy's end and the rent is current to the end of May 2014, I find it appropriate for the Order of Possession to be effective **May 31, 2014**. It must be noted that the landlord has discretion in respect to enforcing the Order, or for the parties to mutually agree on a different resolution.

As the landlord has been successful in their claim, they are further entitled to recover their filing fee of \$50.00.

Conclusion

The tenant's application **is dismissed**, without leave to reapply.

I grant an Order of Possession to the landlord **effective May 31, 2014**. If the landlord wants to end the tenancy the tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I Order that the landlord may retain \$50.00 from the tenant's security deposit in satisfaction of the filing fee. The remaining balance of the security deposit must be administered in accordance with the Act at the end of the tenancy.

This Decision is final and binding on both parties.

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 12, 2014

Residential Tenancy Branch

