



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes:

CNR, MNDC, OLC, PSF, RR

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, an Order the landlord comply with the Act, compensation for damage or loss under the Act, that the landlord provide services and facilities required by law and that the tenant be allowed to reduce rent.

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 and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The only evidence served within the required time-frame set out in the Rules of Procedure was the 3 pages given by the tenant with his application. All other evidence submissions were not made within at least 5 days of the hearing and were set aside.

The tenant indicated several matters of dispute on his application and confirmed that the main issue to deal with during this proceeding was 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 notice ending tenancy and dismissed the balance of the tenant's claim with liberty to re-apply. Further, the tenant did not supply a detailed calculation of the monetary claim.

The tenant said he supplied a copy of the Notice ending tenancy as part of his application. The landlord did receive a copy of the Notice with the application package

served to him in May, 2014. I did not have a copy before me; the tenant did not have a copy with him.

The landlord reviewed the details of the Notice he had before him. The tenant confirmed the details of that Notice were the same as the Notice in dispute.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on May 14, 2014 be cancelled?

Background and Evidence

The tenancy commenced on December 1, 2013; rent was \$850.00 due on the 1st day of each month. A security deposit in the sum of \$425.00 was paid.

The parties confirmed that on May 14, 2014 they had a hearing where the tenant applied to cancel a Notice that had not been issued in the approved form. The landlord's request for an Order of possession was dismissed.

Immediately following the hearing the landlord obtained a 10 day Notice ending tenancy for unpaid rent, in the approved form and served a completed copy to the tenant. The tenant confirmed receipt of that Notice on May 14, 2014.

The Notice included a clerical error, recording the date rent was due as January 5, 2014, rather than May 1, 2014. The effective date of the Notice was May 24, 2014. The tenant believed that rent due date error should invalidate the Notice. The tenant confirmed the balance of the details of the Notice.

The tenant did not request more time to cancel the Notice when he applied for dispute resolution on May 20, 2014. The May 20, 2014 application did not include a request to cancel a Notice. On May 23, 2014 the tenant corrected the application, to include the request to cancel the Notice.

The tenant confirmed that he has not paid rent since February 2014 as the home is uninhabitable.

The landlord said that he wants the tenant to move out immediately. During the hearing discussion took place in relation to a possible mutual agreement; this did not succeed.

Analysis

Section 90 of the Act stipulates that a document given personally is deemed served on the day of personal delivery. Therefore, I find that the tenant received the Notice to end tenancy on May 14, 2014.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on May, I find that the earliest effective date of the Notice is May 24, 2014.

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 May 24, 2014, the date indicated on the Notice; 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 has confirmed rent has not been paid since February 2014. The tenant disputed the Notice, but has not paid rent.

Section 26 of the Act provides:

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

As the tenant has not paid rent I find, pursuant to section 46(5) of the Act that the tenant accepted that the tenancy has ended on the effective date of the Notice; May 24, 2014. Therefore I find that the tenant's application is dismissed.

I note that the tenant failed to dispute the Notice within the required 5 days. His application was required no later than May 19, 2014. He did not request more time to dispute the Notice.

The tenant suggested the Notice should be invalid as a result of the clerical error on the date rent was due. However, the Notice informed the tenant that an error on the Notice does not invalidate the Notice. The Notice issued included the required detail, set out in section 52 of the Act.

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.*

As the landlord said that he wants the tenant to move out of the rental unit I find that he has effectively requested an Order of possession. Therefore, the landlord has been granted 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 10 day Notice to end tenancy is dismissed.

The balance 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: July 15, 2014

Residential Tenancy Branch

