



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRANS PACIFIC REALTY ADVISORS, AGENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC OPC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;
- b) To cancel a notice to end tenancy for unpaid rent pursuant to section 46; and
- c) To recover the filing fee for this Application.

Service:

The 10 day Notice to End Tenancy is dated May 5, 2014 to be effective May 21, 2014 and the one month Notice for cause is dated May 20, 2014 to be effective June 30, 2014; the tenant confirmed they were served on him by registered mail. The tenant /applicant gave evidence that he personally served the Application for Dispute Resolution and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant did not pay the rent for May within the time limitation or, in the alternative, that there is sufficient cause to end the tenancy? Or is the tenant entitled to any relief and to recover filing fees?

Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. There is some dispute as to when the tenancy commenced as the landlord began managing the building after the tenancy began. There is also some uncertainty as to the amount of the security deposit. It is undisputed that rent is now \$1598 a month. The undisputed evidence is that the landlord served the Notice to End Tenancy for unpaid rent on May 5, 2014 and the tenant paid the rent

on May 6, 2014 which effectively cancelled the Notice as the rent was paid within the 5 day period pursuant to the provisions of section 46 of the Act.

The landlord also served a Notice to End Tenancy for cause, which is the repeated late payment of rent. The tenant disputed this Notice and he provided a copy of a rental ledger and the landlord also provided one. The tenant alleged that this problem was caused by the landlord losing his cheque for May 2014. The landlord denied this and pointed to the rental ledger showing many late payments in 2013 and 2014. The tenant noted his problems including many deaths in the family and personal health issues that had made life very difficult for him.

Included with the evidence are copies of the Notices to End Tenancy, rental ledgers and statements by both parties, registered mail receipts and copies of cheques and receipts.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the 10 day Notice to End Tenancy is not effective according to section 46(4) of the Act as the rent was paid within 5 days after the Notice was served. On the Notice to End Tenancy for cause, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

I find the weight of the evidence is that there was repeated late payment of rent. Although the tenant had issues with the way the landlord handled the problem with the May 2014 cheque, I find from the ledger submitted by the tenant that there were late payments of rent in August 2013, in February, March and April 2014. Therefore, I find the landlord has satisfied the onus of proving there is sufficient cause of repeated late payment of rent. I dismiss the Application of the tenant. The landlord requested an Order of Possession pursuant to section 55.

The parties discussed the matter and agreed on a move out date of July 31, 2014.

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Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on June 30, 2014 according to the Notice. An Order of Possession is issued to the landlord effective July 31, 2014 as agreed by the parties.

I find the tenant not entitled to recover filing fees for his Application due to his lack of success.

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: July 10, 2014

Residential Tenancy Branch

