



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Street Holding
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC

Introduction

This is an application filed by the tenant to cancel a notice to end tenancy issued for unpaid rent and a monetary order request for money owed or compensation for money owed.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package, I am satisfied that both parties have been properly served.

The landlord states both in writing and in his direct evidence that the landlord wishes to end the tenancy and to obtain an order of possession.

Issue(s) to be Decided

Is the tenant entitled to an order to cancel the notice to end tenancy?

Is the tenant entitled to a monetary order?

Is the landlord entitled to an order of possession?

Background and Evidence

This tenancy began on July 2, 2014 on a fixed term tenancy ending on December 31, 2012 and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$800.00 payable on the 1st of each month and a security deposit of \$400.00 was paid on July 2, 2012.

Both parties confirmed that the landlord served the tenant with a 10 day notice to end tenancy issued for unpaid rent dated May 16, 2014 by posting it to the rental unit door on May 16, 2014. The notice states that rent of \$1,280.00 was unpaid that was due on May 1, 2014. The notice displays an effective end of tenancy date of May 26, 2014.

The landlord states that since the notice was served on the tenant that the tenant has not paid any rent for May, June and July as of the date of this hearing. The tenant disputes the landlord's claim stating that he paid rent for May 2014 by using a monetary order that he received on Residential Tenancy Branch File No. 816480 for \$816.90 and the remainder in cash. The landlord disputes this stating that a review hearing was granted and scheduled for July 8, 2014 as the decision and order dated May 1, 2014 was suspended pending the outcome of the review hearing. The tenant acknowledged receiving the review decision and the notice of hearing package for the review hearing.

The tenant re-stated that he wished to have an adjournment for his two witnesses and that they would not be available until September of 2014. The tenant stated that these two witnesses would provide evidence that he paid rent prior to May 1, 2014. When asked to clarify, the tenant could not provide any details of any evidence from the two witnesses that they could provide evidence that any rent was paid after May 16, 2014 when the 10 day notice was served. As such, the tenant's request for an adjournment was denied. The hearing proceeded.

The landlord states that on May 8, 2014 a Review Application was filed for which the landlord was granted a review that suspended the decision and monetary order dated May 1, 2014 and a Review Hearing Granted and scheduled for July 8, 2014. On July 8, 2014 neither party attended the hearing and the application was dismissed with leave to reapply. The tenant stated that he did receive the Review Decision in May 2014, but did not read the entire decision. The Review Decision was read to the tenant and an explanation of what a suspension was clarified to the tenant. The tenant stated that after he received the review decision he has not paid any rent to the landlord as of the date of this hearing and has no plans on doing so until the landlord makes repairs as ordered in the May 1, 2014 decision. Section 26 of the Residential Tenancy Act was clarified with the tenant. The tenant reiterated that he would not pay the rent until the landlord complied with the repair order. It was clarified a second time with the tenant that the decision and order dated May 1, 2014 was suspended pending a review hearing. It was also explained that the review hearing was scheduled on July 8, 2014 for which neither party attended and the review hearing was dismissed with leave to reapply. At this time the tenant stated that he would be hanging up and no longer participating in the dispute hearing. The tenant was cautioned to not hang up but to continue to participate and was warned that non-participation would only hurt the tenant's application. The tenant refused to make any further comment at this time. The hearing proceeded in absence of the tenant's participation, but noted with the landlord that the tenant had still not left the call.

The landlord made an application to dismiss the monetary portion of the tenant's claims. As the tenant was no longer participating to put forth his monetary claim, the tenant's application was dismissed without leave to reapply as the landlord was in attendance in response. At this time, the tenant exited the conference call.

Analysis

I find based upon the undisputed testimony of the landlord that the tenant was served with the 10 day notice to end tenancy for unpaid rent dated May 16, 2014 by posting it to the rental unit door. The tenant admitted in his direct testimony that since being served with the notice that no rent has been paid to the landlord as of the date of this hearing. The tenant has failed to provide sufficient evidence that any rent was paid after the 10 day notice to end tenancy dated May 16, 2014 was served. The tenant's application to cancel the notice to end tenancy is dismissed. The landlord's notice dated May 16, 2014 is upheld. The landlord has established a claim for an order of possession. The landlord is granted an order of possession. The tenant must be served with the 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.

Conclusion

The tenant's application is dismissed.
The landlord is granted an order of possession.

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

