



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPQ; MNR, FF
Tenant: CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by three agents for the landlord

The landlord submitted documentary evidence that the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on September 22, 2014 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5th day after it was mailed.

Based on the evidence of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*. In addition, I note that the hearing was actually set as the result of the tenant's own Application for Dispute Resolution.

During the hearing, the landlord verbally request an order of possession should the tenant be unsuccessful in his Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46 of the *Act*.

If the tenant is unsuccessful in his Application seeking to cancel the 10 Day Notice to End Tenancy for Unpaid Rent it must be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

It must also be decided if the landlord is entitled to an order of possession because the tenant no longer qualifies for a rental subsidy; to a monetary order for unpaid rent; and

to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 49.1, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a tenancy agreement signed by the parties on December 24, 2012 for a month to month tenancy beginning on February 1, 2013 for the market rent of \$401.00 with the tenant's portion of the market rent payable to the landlord no later than the 1st day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on September 2, 2014 with an effective vacancy date of September 15, 2014 due to \$742.00 in unpaid rent; and
- A copy of a 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit.

The landlords submit that the tenant has failed to pay the arrears and in fact has also failed to pay rent in the amount of \$426.00 (the new market rent) for the month of October 2014.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

While the tenant did file an Application for Dispute Resolution within the required 5 days he did not attend the hearing or present his evidence, as such I dismiss the tenant's Application in its entirety and find the 10 Day Notice to End Tenancy remains in effective and enforceable.

Section 55(1) of the *Act* states if a tenant makes an Application for Dispute Resolution to dispute a landlord's notice to end tenancy, the director must grant an order of possession to the landlord if, the landlord makes an oral request for an order of

possession and the director dismisses the tenant's Application or upholds the landlord's notice.

In addition, based on the landlord's undisputed testimony, I find the landlord has established the tenant has failed to pay the outstanding arrears and the full market rent for the month of October 2014.

Conclusion

Based on the above and the landlord's verbal request, I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,218.00** comprised of \$1,168.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: October 28, 2014

Residential Tenancy Branch

