



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WAL-DEN INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Preliminary Issues

The Tenant testified that his surname had been spelled incorrectly on the Notice of Hearing documents and requested that the spelling be corrected.

The Landlord confirmed that the spelling of the Landlord's corporate name should have a hyphen in the first name and should end with "BC" Ltd.

Based on the above, and in absence of an objection from either party, the style of cause was amended to include the correct spelling of the Tenant's surname and the corporate Landlord's name, in accordance with section 64 (3)(c) of the *Act*.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on November 10, 2014, to obtain an Order to cancel a 10 Day Notice to end tenancy issued for unpaid rent.

The hearing was conducted via teleconference and was attended by the Landlord and the male Tenant, G.J.L.M. Despite the fact that the male Tenant affirmed that he was representing both Tenants, the female Tenant S.M.M. was heard speaking to the Tenant in the background, during the entire hearing. Based on the foregoing, I find that both Tenants were well represented at the hearing. For the remainder of this decision, terms or references made to the Tenants importing the singular shall include the plural and vice versa.

The parties gave affirmed testimony and confirmed receipt of documents served by the Tenants. The Landlord affirmed that he had not submitted or served documentary evidence. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the

testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 10 Day Notice for unpaid rent issued November 3, 2014, be upheld or cancelled?
2. If upheld, did the Landlord appear at the hearing and make an oral request for an Order of Possession?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement listing both Tenants for a 1 year fixed term tenancy that commenced on July 1, 2010 and switched to a month to month tenancy after the completed of the first year. Rent began at \$875.00 payable on or before the 1st of each month and was subsequently raised to \$910.00 per month. On or before June 2, 2010 the Tenants paid \$437.50 as the security deposit and by July 28, 2010 the Tenants had paid a total of \$427.50 as the pet deposit.

The Landlord submitted that the Tenants served him a 30 day written notice to end their tenancy which was dated on October 31, 2014 and signed by both Tenants. The Landlord testified that he received \$437.50 directly from Income Assistance plus \$200.00 cash from G.J.L.M. as payment for November 1, 2014 rent, which left a balance owing of \$272.50. On November 3, 2014 the Landlord personally served the Tenants with a 10 Day Notice to end tenancy. The Landlord stated that no rent has been paid since serving the Notice; therefore, he was requesting an Order of Possession.

The Tenant testified and confirmed that rent was still outstanding for November 2014. He argued that his prior rent payments were paid directly to the Landlord by Income Assistance and that due to recent spousal payments Income Assistance would no longer pay his rent directly to the Landlord.

The Tenant attempted to settle these matters, requesting permission to stay in the rental unit until January 2015 and offered a payment plan to have the arrears paid in full by January 2015. The Landlord declined the offer to settle and requested to proceed with the 10 Day eviction and issuance of an Order of Possession

Analysis

Based on the foregoing, the relevant written submissions, and on a balance of probabilities, I find as follows:

Upon review of the 10 Day Notice to End Tenancy, I find the Notice was served upon the Tenants in a manner that complies with the Act. The Landlord provided oral testimony that clarified that the amount listed on the 10 Day Notice included \$25.00 late payment fees and a \$15.00 administration fee. Those amounts are not rent and should

not be included on a 10 Day Notice; that being said, listing those amounts on the 10 Day Notice does not void or nullify the Notice in this case.

Section 26 of the Act provides that a tenant must pay rent when it is due in accordance with the tenancy agreement.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

Notwithstanding the fact that the Tenants filed their application to dispute the Notice within the required 10 Day period; the undisputed evidence was that the Tenants did not pay the full amount of rent owed by November 8, 2014, five days after being served with the 10 Day. Therefore, I find there is insufficient evidence to support cancelling the 10 Day Notice. Accordingly I dismiss the Tenants' application and the 10 Day Notice is upheld.

Section 55 of the Act provides that an Order of Possession must be provided to a landlord if a tenant's request to dispute a Notice to End Tenancy is dismissed and the landlord makes an oral request for an Order of Possession during the scheduled hearing.

In this case the Landlord appeared at the hearing and made an oral request for an Order of Possession. Accordingly, the Landlord's request is granted.

Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenants**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Supreme Court and 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: November 17, 2014

Residential Tenancy Branch

