



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WITMAR HOLDINGS LTD
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

CNR, CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 1-Month Notice to End Tenancy for Cause dated September 15, 2014 and to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated October 3, 2014 and effective October 14, 2012.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and make submissions during the hearing. I have considered all of the evidence properly served and the verbal testimony given by the parties during the hearing.

Issue(s) to be Decided

Should the landlord's Ten-Day Notice to End Tenancy for Unpaid Rent be cancelled?

Should the landlord's 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The tenancy began October 1, 2013 with rent of \$800.00.

Submitted into evidence were copies of the 1-Month and 10-Day Notices, copies of written statements, a copy of a previous decision, copies of communications and proof of service.

The landlord testified that the tenant failed to pay rent due on October 1, 2014 and they issued a 10-Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the rental arrears owed within the required 5 days to cancel the

Notice and , in fact, never paid any of the arrears at all. The landlord testified that they have not received any rent payments from the tenant for October nor November 2014.

The tenant disputed the above claims and stated that his rent for October was paid directly to the landlord and if this did not occur it was because the landlord neglected to cash the cheque. The tenant stated that his \$800.00 rent for November 2014 was also sent to the landlord directly from the government. The tenant stated that he could prove that the funds were sent to pay his rent as they were deducted from his cheque.

The tenant gave testimony with respect to the manner in which he has been treated by the landlord.

Analysis – Notice to End Tenancy

Neither party raised any issues regarding service of the application or evidence. I have reviewed all testimony and other evidence. However, only evidence relevant to the issues and findings in this matter are referenced in this decision.

I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

The evidence indicates that the tenant did not pay the \$800.00 rent for October 2014 when it was due.

When a tenant fails to comply with section 26, section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it. This section of the Act also provides that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

In this instance I find that the tenant was in arrears at the time the Notice was served on October 3, 2014. I find that, although the tenant claims that the October rent was paid in full, the tenant was not able to prove that he paid the rental arrears within the required 5-day period to cancel the 10-Day Notice.

Section 46(5) of the Act provides that if a tenant does not pay the rent owed within 5 days of receiving the 10-Day Notice to End Tenancy for Unpaid Rent, or dispute the Notice by proving that the rent was paid, then the tenant must vacate the rental unit to which the notice relates by the effective date of the Notice.

While I make no findings on the actual amount of the arrears that are now owed by this tenant, I do accept that the tenant did not pay the rent owed for October 2014 within 5 days of receiving the Notice. I find that the existence of arrears in any amount beyond the 5-day window validates the Ten Day Notice to End Tenancy for Unpaid Rent. For this reason, I find that the Act does not permit the Notice to be cancelled.

Accordingly, I find that must dismiss the tenant's application requesting an order to cancel the Ten-Day Notice.

During the hearing the landlord made a request for an order of possession. Under the provisions of section 55(1) of the Act, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy.

As this tenancy is ending, I find that the tenant's application disputing the 1-Month Notice to End Tenancy for Cause is a moot issue and need not be determined as the tenancy is being terminated based on the 10-Day Notice to End Tenancy for Unpaid Rent.

Based on the testimony and evidence discussed above, I hereby issue an Order of Possession in favour of the landlord effective two days after service to the tenant. 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.

The tenant's application is dismissed without leave to reapply.

Conclusion

The tenant is not successful in the application and the landlord is issued an order of possession based on the 10-Day Notice to End Tenancy for Unpaid Rent. The dispute over the 1-Month Notice to End Tenancy for Cause is moot as the tenancy is ending.

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 13, 2014

Residential Tenancy Branch

