



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR

Introduction:

This was an application by the tenant to cancel a Notice to End the Tenancy for non-payment of rent dated November 4, 2014. Both parties were present at the hearing.

SERVICE:

I find that the Notice to End a Residential Tenancy was served personally on November 4, 2014 and the tenant did not file his Application until November 18, 2014. The landlord said she received it by registered mail.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties and a witness attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The parties and the witness were quite upset and had to be reminded twice not to interrupt each other. The evidence given was that the tenancy began two or three years ago. This is a trailer on a 3 acre lot and the current rent is \$300 a month.

The tenant's witness said the tenant did not pay rent in November for he was receiving ridiculous bills for hydro (\$515 for 2 months) and could not afford it on his disability pension. The landlord said that he is not responsible for hydro bills for other people. She said that the tenant had invited (or allowed) some other people to move trailers onto the lot and plug into his hydro and he charges them rent which she does not receive. Apparently there is a house on the lot with no hydro which she rents to others and they used the tenant's hydro too but the landlord said she had never given permission for them to use his hydro. She said he should have refused to allow anyone to use his hydro. The landlord requested an Order for Possession effective January 10, 2015. The tenant noted in his Application that repairs were needed and none had been done.

Analysis:

The Notice to End a Residential Tenancy is based on non-payment of rent under section 46 of the Act. The *Residential Tenancy Act* permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the

rent. I find section 46 of the Act states that a tenant must either pay the outstanding rent or make the application to dispute the Notice within 5 days after service. I find the tenant did not pay the rent within 5 days and did not dispute the Notice until 14 days had passed so he is out of time to dispute the Notice.

Furthermore although the tenant may have a potential dispute with the landlord or with BC Hydro, this does not constitute a valid reason to withhold his rent. I find the weight of the evidence suggests that he is perhaps too kind in allowing others to use his hydro which is not authorized by the landlord or her responsibility. Pursuant to section 26 of the Act, a tenant must pay his rent on time whether or not the landlord fulfills his or her obligations under the Act. I have therefore dismissed his application to cancel the Notice to End the Tenancy. Section 55(1)(a) provides that the arbitrator must grant an order of possession of the rental unit if the landlord makes an oral request for an order of possession at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. The landlord has made this request at the hearing. As a result I grant the landlord an Order for Possession effective January 10, 2015 as she agreed.

Conclusion:

I grant the landlord an Order for Possession effective January 10, 2015. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement. I dismiss the tenant's application without recovery of the filing fee.

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: December 17, 2014

Residential Tenancy Branch

