



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, OLC

Introduction

This hearing dealt with an application by the tenant for orders setting aside notices to end tenancy. Both parties appeared at the hearing with the landlord being represented by his agents GS and SM.

At one point during the hearing, I had to put the tenant on mute as he would not stop interrupting me, despite having been given several warnings. The tenant was permitted to speak again at the end of the hearing.

Issues to be Decided

Should the notice to end tenancy for cause be set aside?

Should the notice to end tenancy for unpaid rent be set aside?

Background and Evidence

The parties agreed that the tenant is responsible to pay \$1,600.00 per month in rent in advance on the first day of each month. They further agreed that \$400.00 of his monthly rent was paid directly to the landlord by a government agency in every month except for April.

The landlord claimed that the tenant had failed to pay \$1,200.00 of his rent in each of the months of January, February and March 2015 and that he paid no rent whatsoever in the month of April. The tenant claimed that there are no rental arrears for January, February and March but acknowledged that he did not pay any rent in the month of April. The parties agreed that the tenant was personally served with a 10 day notice to end tenancy for unpaid rent (the "Rent Notice") on April 14, 2015 as well as a one month notice to end tenancy for cause (the "Cause Notice"). The tenant had also been served with a one month notice to end tenancy on March 31 which precipitated this

application which was filed on April 9, but the parties agreed that this notice to end tenancy was replaced by the Cause Notice.

The tenant testified that he did not pay rent in April for three reasons. First, he said he did not know to whom he should pay the rent. The tenant had been paying rent to the landlord's agent GS but he testified that on April 10, the landlord told him not to pay GS. Second, the tenant said he believed that rent was put on hold until this hearing had taken place. Third, the tenant said the landlord had offered to pay him \$9,000.00 if he would vacate the rental unit and brought him paperwork to sign to that effect. The tenant said he refused to sign the paperwork because he did not believe it was legal but was surprised when he was served with the Rent Notice because he believes the landlord does not expect rent and is still willing to pay him to move. The landlord's agents acknowledged that the landlord had made a payment offer in exchange for the tenant vacating the premises, but advised that the landlord has since withdrawn that offer.

The tenant tried to give testimony regarding the landlord's actions, accusing him of entering his home without permission. I refused to hear testimony on this matter because it was not relevant to the issues before me.

Analysis

Section 26(1) of the Act provides that tenants must pay rent when it is due regardless of whether the landlord complies with the Act. Although the tenant disputed that he owes money for the months of January, February and March, he acknowledged that he has not paid rent for the month of April. The tenant's rent was due on April 1, 9 days before the tenant was allegedly told that he should not pay rent to GS. I do not accept that the tenant did not pay rent because he was uncertain who should receive it. Even if he was uncertain, the Rent Notice provided an address for service for the landlord's agent and the tenant could have paid rent within 5 days and cancelled the Rent Notice. Instead, the tenant chose not to give his rent to anyone.

There is no provision under the Act whereby tenants may withhold rent while awaiting a dispute resolution hearing. The tenant did not receive this advice from the Residential Tenancy Branch and had no reason to believe that his rent was not payable until his dispute was heard. Further, the rent was due before the tenant filed his application for dispute resolution.

While I appreciate that the tenant believed he was close to entering into an agreement with the landlord whereby he would receive money instead of pay it, the tenant did not sign and execute this agreement and by his own testimony, refused to commit to it. The

tenant had no reason to believe the landlord was bound by an agreement which the tenant refused to sign and even if he did, the issuance of the Rent Notice put the tenant on notice that the landlord expected him to pay the full amount of his rent.

At the hearing, the tenant offered to pay his rent in full the next day, but I advised him that this offer could not affect my decision as I could only consider events which took place prior to the hearing.

I find that the tenant had no lawful reason to withhold his rent in the month of April. Regardless of whether the tenant owes money for January – March, I find that the tenant owed rent for April and that the Rent Notice was justifiably served. I therefore dismiss the tenant's claim for an order setting aside the notice.

As the tenancy has ended pursuant to the Rent Notice, it is unnecessary for me to address the Cause Notice and I dismiss the claim to set aside that notice.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. 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 landlord is entitled to an order of possession effective 2 days after service but at the hearing, the landlord stated that the order could be effective on May 15, 2015. I have therefore made the order effective on that date.

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: May 01, 2015

Residential Tenancy Branch

