



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR CNC OLC FF

Introduction

This hearing convened pursuant to the tenant's application. The landlord and the tenant participated in the teleconference hearing.

In the hearing, both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Issue – Notice to End Tenancy for Cause

On July 6, 2015 the tenant applied to cancel a notice to end tenancy for unpaid rent, as well as for an order that the landlord comply with the Act. On July 31, 2015 the tenant submitted to the Branch and served on the landlord an amended version of the second page of his application, in which he indicated that he also sought to cancel a notice to end tenancy for cause. The notice to end tenancy for cause was served on the tenant on July 6, 2015. In the hearing the landlord orally requested an order of possession.

The tenant stated that when he submitted his application he was advised by Service BC staff that because he received a notice to end tenancy for unpaid rent, the notice to end tenancy for cause was void and he did not have to apply to dispute it. The tenant stated that as soon as he discovered that he did need to apply to cancel the notice to end tenancy for cause, he amended his application.

I informed the tenant that, as set out in the Act and on the notice to end tenancy for cause, he was required to apply to cancel the notice to end tenancy for cause within 10 days of being served with the notice. I therefore dismissed the portion of the tenant's application regarding cancellation of the notice to end tenancy for cause.

I informed the landlord that the corrected effective date of the notice to end tenancy for cause was August 31, 2015, and that was the earliest date that I could date an order of possession pursuant to that notice. The landlord stated that he wished to proceed with the portion of the tenant's application regarding the notice to end tenancy for unpaid rent.

I informed the parties that if I determined that the notice to end tenancy for unpaid rent was not valid, I would grant the landlord an order of possession pursuant to the notice to end tenancy for cause, and that order would be effective August 31, 2015.

Issue(s) to be Decided

Is the notice to end tenancy for unpaid rent valid?

Background and Evidence

On July 3, 2015 the landlord served the tenant with a notice to end tenancy for unpaid rent of \$950.00. The notice indicated that this amount was due on July 1, 2015.

The landlord stated that in July 2012 he offered the rental unit to the tenant for \$650.00 per month rent. The landlord stated that he offered this rent, rather than market rent of \$900.00, because the tenant was an employee of another business of the landlord, and the tenant agreed to do maintenance work on the rental property. The landlord stated that rent was due between the first and fifth day of each month.

The landlord stated that in January 2015 the tenant informed the landlord that he was resigning from his job with the landlord as of February 6, 2015, and moving out of the rental unit on February 8, 2015. The tenant told the landlord that the tenant's partner wanted to remain in the rental unit. The landlord stated that he told the tenant that it was fine but the partner would have to pay market rent.

The landlord stated that the tenant did not move out, and the tenant's partner did move out. The landlord stated that the tenant, who was no longer an employee of the landlord, refused to pay the increased rent and refused to do maintenance on the property. The landlord stated that he discovered that he was required to give the tenant a two month notice of rent increase, and on March 29, 2015 he gave the tenant notice that as of June 1, 2015 the rent would increase from \$650.00 to \$950.00. The landlord stated that at the beginning of June 2015 the tenant only paid \$650.00 for that month's rent, and the landlord served the tenant with a notice to end tenancy for unpaid rent. On June 9,

2015 the tenant paid the landlord an additional \$300.00. At the beginning of July 2015 the tenant paid the landlord \$350.00 and told the landlord that the rent for July 2105 was now paid in full.

The tenant's response was as follows. The tenant's understanding of the terms of the tenancy was that the rent was \$650.00 per month and he was to maintain the property. There was no written tenancy agreement. The tenant stated that there was no mention that he was being subsidized because he was an employee.

The tenant stated that he intended to move out and packed up his truck, but his truck broke down on the way to the ferry and he had to return to the rental unit and repair his truck. He then decided not to move out. The tenant stated that his partner moved out at the end of April 2015. The tenant stated that the upstairs tenant took over maintenance of the property. The tenant submitted that the rent remains at \$650.00, and the rent increase to \$950.00 is not in accordance with the Act.

Analysis

I find that the notice to end tenancy is not valid. The landlord did not increase the rent in accordance with the Act, and therefore the rent remains at \$650.00. A notice of rent increase must be in the prescribed format, must be served at least three clear months before the increase takes effect, and may only be for an amount within the prescribed increase for that year. In 2015, the prescribed rent increase is 2.5 percent. The tenant paid a total of \$650.00 for July 2015 rent. Further, as rent is due between the first and fifth day of each month, the notice to end tenancy was issued prematurely on July 3, 2015. I therefore cancel the notice to end tenancy for unpaid rent dated July 3, 2015.

As the tenancy is ending August 31, 2015, it is not necessary for me to consider the portion of the tenant's application regarding an order that the landlord comply with the Act.

As the tenant's application to cancel the notice to end tenancy for unpaid rent was successful, I find that he is entitled to recovery of the \$50.00 filing fee for the cost of his application.

Conclusion

The notice to end tenancy for unpaid rent is cancelled. The monthly rent remains at \$650.00, payable between the first and fifth day of each month.

The tenant is entitled to \$50.00 for recovery of his filing fee. The tenant may deduct this amount from August 2015 rent, and must pay the landlord a balance of \$600.00. If the tenant fails to pay this amount it is open to the landlord to serve the tenant with a new notice to end tenancy for unpaid rent.

I grant the landlord an order of possession effective August 31, 2015. 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.

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: August 6, 2015

Residential Tenancy Branch

