



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing was convened to deal with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") and recovery of the filing fee paid for the application.

The tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the neither party raised any issues regarding service of the application or the evidence.

Thereafter both parties gave affirmed testimony, were provided the opportunity to present their evidence orally up to a point, and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue #1-After both parties had fully testified in support of their respective positions in this matter, the landlord effectively requested an order of possession for the rental unit as she stated she wanted the tenant to move out by January 15, 2016.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice and to recover the filing fee?

Background and Evidence

The undisputed evidence was that this tenancy began on June 1, 2015, and monthly rent is \$1250.00.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

The landlord stated that the tenant was served with the Notice on or about the date the Notice was dated, which was October 11, 2015, by leaving it with the tenant, listing unpaid rent of \$750.00 as of October 1, 2015. The effective move-out date listed was October 20, 2015.

I accept that the tenant was served the Notice by October 16, 2015, the date he filed his application in dispute, as the landlord was unsure of the actual date served.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to October 26, 2015, which is 10 days after service of the Notice.

The landlord asserted that since the issuance of the Notice, the tenant made payments of \$500.00 on October 25, 2015, \$895.00 on November 1, 2015, \$400.00 on November 10, 2015, and no payments in December 2015.

In response, the tenant admitted that he had not paid the rent as stated by the landlord.

Analysis

Pursuant to section 46 of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent listed or dispute the Notice within five days. In this case, I find the tenant disputed the Notice by filing his application; however, when a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

Upon hearing from the parties, I am satisfied that the tenant owed the landlord rent when the Notice was issued and that he did not pay all or any of the rent owed to the landlord within five days of receiving the Notice. I also find that the tenant did not establish that he had the legal right to withhold the rent owed.

Therefore, I find the tenancy has ended for the tenant's failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I therefore dismiss the tenant's application seeking cancellation of the Notice.

At the landlord's request, I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective on January 15, 2016, as requested, after service upon the tenant, pursuant to section 55(1) of the Act.

Conclusion

The tenant's application seeking cancellation of the Notice is dismissed, without leave to reapply.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon him, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is advised that costs of such enforcement are recoverable from the tenant.

Dated: December 31, 2015

Residential Tenancy Branch

