



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF, CNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing by conference call and gave affirmed testimony.

Preliminary Issue

The tenant stated that he did not receive the landlords' notice of hearing package, but confirmed receipt of the landlord's documentary evidence on January 6, 2016. The landlords stated that the tenant was served with the notice of hearing package on December 29, 2015 by posting it to the rental unit door. The landlords stated that he had photographs and witnesses, but did not provide either for the hearing. The tenant argues that he has no information about the landlords' application. On the basis of this

evidence, I am not satisfied that the tenant was deemed served with the dispute resolution package pursuant to section 89 of the Act. The landlord's application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

The landlord confirmed receipt of the tenant's notice of hearing package and the submitted documentary evidence. As such, I find that the landlord has been properly served pursuant to section 89 of the Act. The hearing shall proceed on only the tenant's application to cancel a 10 Day Notice. The landlords stated that their ultimate goal was to end the tenancy.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's application and my findings are set out below.

This tenancy began on September 1, 2015 on a fixed term tenancy ending on August 31, 2016 as shown by the submitted copy of the signed tenancy agreement dated October 4, 2015. The monthly rent is \$1,650.00 payable on the 1st day of each month and a security deposit of \$825.00 was paid on August 28, 2015. A condition inspection report for the move-in was completed by both parties on September 1, 2015.

Both parties confirmed that the landlord served the tenant with the 10 Day Notice dated December 20, 2015 in person with a witness on December 20, 2015. The 10 Day Notice stated that the tenant failed to pay rent of \$1,650.00 that was due on December 1, 2015 and displays an effective end of tenancy date of December 30, 2015.

Both parties confirmed that the tenant failed to pay all of the rent for December 2015. The tenant stated that \$1,125.00 was paid late and that a further \$525.00 was still owed to the landlord. The landlord confirmed the outstanding rent arrears.

The tenant stated that he had a verbal agreement with the landlord to pay the rent later in January 2016. The landlord disputes this stating that there was no agreement for the tenant to pay rent later. The landlord stated that as of the date of this hearing the tenant is still in arrears for December 2015 for \$525.00. The tenant confirmed that that rent arrears for December 2015 have still not been paid.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlord testified that the tenant failed to pay all of the rent for December 2015. The tenant admits that he did not pay all of December's rent.

The tenant also stated that he had a verbal agreement with the landlord to complete payment of December rent in January. This is disputed by the landlord. The tenant was unable to provide any supporting evidence that an agreement was made with the landlord to pay the rent at a later time. I also note that the tenant as of the date of the hearing has still failed to pay the outstanding rent.

As the tenant has failed to pay his rent in full when due, I find that the 10 Day Notice issued December 20, 2015 is valid and dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply. As the tenant's application to cancel the 10 Day Notice is dismissed, the landlord was entitled to possession of the rental unit on December 30, 2015, the effective date of the 10 Day Notice. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

Conclusion

The landlords' application is dismissed with leave to reapply.

The tenant's application is dismissed. The 10 Day Notice dated December 20, 2015 is upheld.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: February 11, 2016

Residential Tenancy Branch

