



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTH BANK MANOR SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNR, OPT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "Notice"). The Tenant also applied for more time to cancel the notice to end tenancy and for an Order of Possession for the rental unit.

Two agents for the Landlord and the Tenant appeared for the hearing. However, only one of the agents and the Tenant provided affirmed testimony during the hearing. The agent confirmed receipt of the Application. Both parties confirmed receipt of each other's documentary evidence which was served prior to the hearing including a copy of the Notice.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party and the witness on the evidence provided.

Preliminary Issues

At the start of the hearing, the Tenant confirmed that he was still residing in the rental unit. Therefore, I dismissed the Tenant's Application for an Order of Possession for the rental unit. The parties confirmed that the Tenant received the Notice on January 11, 2016 by personal service. The Tenant made the Application to dispute the Notice on January 12, 2016. Therefore, I determined that the Tenant had made the Application within the five day time limit provided by Section 46(4) (b) of the *Residential Tenancy Act* (the "Act"). As a result, I dismissed the Tenant's Application for more time to cancel the Notice as the Application was made within the correct time limits.

Issue(s) to be Decided

- Has the Tenant established that the Notice ought to be cancelled?
- Is the Landlord entitled to an Order of Possession?

Background & Evidence

The parties agreed that this tenancy started on May 1, 2013. A written tenancy agreement was completed for a month to month basis. The Tenant's rent contribution is \$320.00 which is payable on the first day of each month and the Tenant paid a security deposit of \$215.00 at the start of the tenancy.

The Landlord's agent testified that the Tenant was habitually late paying rent and that on January 1, 2016 the Tenant did not pay any rent. As a result, the Tenant was personally served with the Notice on January 11, 2016. The Notice was provided into evidence by the Tenant and shows a vacancy date of January 25, 2016 due to \$320.00 payable on January 1, 2016. The Landlord's agent testified that the Tenant has also failed to pay for February 2016 rent.

The Tenant testified that in mid-December 2015 he informed the Landlord that he would not be able to pay his rent for January 2016. This was because the Tenant had lost his employment assistance payment and was in the process of securing other means of social assistance to pay his rent. The Tenant confirmed that he had not paid his rent for January and February 2016 for this reason but that he had offered the Landlord rent for these months and the month of March 2016 within the last week prior to his hearing. However, the Landlord had refused to accept it.

The Landlord's agent confirmed that the Tenant did not make any rent payment after he was served the Notice and stated that he did not want to accept any more money from the Tenant when it was offered by him the week prior to this hearing because they did not want to re-instate the tenancy as they were seeking to end it for failure to pay the January and February 2016 rent.

The Tenant argued that because he had informed the Landlord prior to the rent payment of January 2016 being made that he was not going to be able to pay it, the Landlord should have given him more time to make the payment. The Tenant also argued that he now had the means to pay his rent and that his nonpayment of rent was not intentional or malicious.

During the course of the hearing, I offered the parties an opportunity to settle the matter by way of mutual agreement but both parties were unsuccessful in reaching an agreement on mutual terms.

Analysis

Section 26 of the Act requires a tenant to pay rent whether or not the landlord complies with the Act unless the tenant has a right to deduct or withhold rent. In this case, I accept the undisputed evidence that the Tenant was personally served with a Notice, which complied with the Act, on January 11, 2016.

I also accept that the Tenant made his Application to dispute the Notice within the five day time limit provided by the Act. However, an Application made within the correct time limit of the Act does not mean that it should be cancelled. In this case, the Tenant must prove that he had authority to withhold or deduct his rent.

Having considered the Tenant's evidence as to why he did not pay rent, I find the Tenant has not disclosed any authority under the Act to not pay rent. If a tenant does not have the means to pay rent or informed the landlord in advance of the reason why they are unable to pay it, this does not automatically mean that can avoid their obligation and requirement to pay rent under the Act. Rather, the Notice explains to the tenant that they must pay rent or if they cannot, they must move out by the effective vacancy date of the Notice, which in this case was January 25, 2016 as documented on the Notice.

Therefore, I find that the Tenant has failed to establish that the Notice should be cancelled and the Tenant's Application in this respect is dismissed. Section 55(1) of the Act states that if a tenant makes an Application to dispute a Notice the Arbitrator **must** grant an Order of Possession if the Notice complies with the Act and the tenant's Application is dismissed. As the effective date of the Notice has now passed and the Tenant is in rental arrears, the Landlord is entitled to a two day order of Possession. If the Tenant fails to vacate the rental unit, the order may be enforced in the Supreme Court of British Columbia as an order of that court. Copies of the order are attached to the Landlord's copy of this decision for service on the Tenant.

Conclusion

The Tenant's Application is dismissed without leave to re-apply. The Landlord is granted an Order of Possession which is effective two days after service on the Tenant.

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: March 01, 2016

Residential Tenancy Branch

