



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Both parties identified, during the hearing, that a third party was present when they made an agreement (as outlined below). The landlord provided contact information to call the third party in to provide testimony, however, the witness did not answer her phone and she did not participate in the call. Neither party had informed the witness, prior to the hearing, that she might be called to provide testimony.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent, pursuant to Sections 46 and 55 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord testified the tenancy began in July 2014 as a month to month tenancy for the monthly rent of \$1,250.00 due on the 1st of each month and a security deposit of \$675.00 was paid.

The landlord submitted into evidence the following documents:

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on January 4, 2016 with an effective vacancy date of January 15, 2016 due to \$1,250.00 in unpaid rent; and

- A copy of a Proof of Service – Notice to End Tenancy confirming that the landlord served the tenant with the Notice to End Tenancy personally on January 4, 2016 at 6:05 p.m. and that this service was witnessed by a local police officer.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the month of January 2016 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent personally on January 4, 2016 at 6:05 p.m. and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

The tenant initially testified that after the landlord served him the Notice he negotiated with the landlord through a third party that he would replace the flooring in the rental unit and the landlord would give him rent free for the months of January and February 2016 and she would pay him \$2,500.00 if left at the end of February 2016. He stated because the landlord has not given him the \$2,500.00 he is planning to stay for an additional 2 months (March and April 2016).

When asked as to why he didn't pursue disputing the Notice he stated that they had already made the agreement the week following receiving the Notice from the landlord and he thought it was resolved.

However, when asked why he didn't pursue disputing the Notice after the landlord served him with notice of this hearing he corrected his earlier testimony and stated they made this agreement after he received the notice of hearing documents; sometime after January 18, 2016.

The landlord acknowledged that they had a discussion on settling matters between them and the third party was there. However, the landlord submits that the agreement was for the tenant to leave immediately and she would give him \$2,500.00 in lieu of having to pay for a bailiff to have him physically removed.

The parties agree the tenant has paid no rent for the months of January, February, or March 2016.

Analysis

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

In this case the tenant first stated that he and the landlord had made an agreement within the 5 days he was allowed to dispute the Notice and so he did not dispute it. He later changed his testimony to say that they had made the agreement after the landlord served him with notice of the hearing. This would have been at least 2 weeks after he received the 10 Day Notice.

In the absence of any corroborating evidence or testimony from a third party as to what the terms of this verbal agreement were, I must rely on the testimony provided by the parties.

Based on the tenant's revised testimony he and the landlord did not enter into an agreement of any kind until sometime after January 18, 2015. As such, from the time the tenant received the Notice on January 4, 2016 until at least January 18, 2015 there was no agreement between the parties with regard to non-payment of rent for the month of January 2016.

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has the right under this *Act* to deduct all or a portion of the rent. Such a right is conveyed to the tenant if he has an agreement in writing from the landlord that he does not have to pay the rent.

As there was no agreement, of any kind other than the tenancy agreement, between the parties prior to January 18, 2016 the tenant was required to pay rent in the full amount. Furthermore, the tenant, in the absence of any other agreement, was required to file an Application for Dispute Resolution within 5 days of receiving the Notice if he believed had authority under the *Act* to withhold his rent for the month of January 2016. As such, I find the tenant had until January 9, 2016 to pay rent in full or file an Application to dispute the Notice.

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice was received by the

tenant on January 4, 2016 and the effective date of the notice was January 15, 2016. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: March 01, 2016

Residential Tenancy Branch

