



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding H & M Rempel
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNR

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent issued on February 25, 2016.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on February 25, 2016 be cancelled?

Background and Evidence

The tenancy commenced on August 14, 2014. Rent is \$675.00 due on the first day of each month.

The tenant confirmed that on February 25, 2016 he received a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of March 12, 2016.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$700.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant disputed the Notice within five days. The tenant submitted evidence that there has been a bed bug problem in his unit and that the landlord has not properly responded to the issue.

The tenant confirmed that he has not spent the equivalent of rent owed on any emergency repair. The tenant did have to dispose of some personal items.

There was no dispute that the tenant has not paid any rent since January 28, 2016, when the balance of January 2016 rent owed was paid.

The landlord submitted evidence of bed bug treatment carried out and said that when they received the tenants' registered mail on April 6, 2016, which alleged further problems, they had the unit inspected again.

Analysis

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant received the Notice on February 25, 2016, I find that the earliest effective date of the Notice is March 11, 2016.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on March 12, 2016; the date given on the Notice, pursuant to section 46 of the Act.

Section 26 of the Act provides:

Rules about payment and non-payment of rent

26 (1) *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 a right under this Act to deduct all or a portion of the rent.*

During the hearing it was explained to the parties that a tenant may only withhold rent owed in very specific circumstances. There was no evidence before that the tenant had made any expenditure on emergency repairs or that the tenant had an order allowing him to make deductions from rent owed.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant disputed the Notice but has not supplied evidence that he had the right to make deductions from rent owed. Therefore, as rent was not paid, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; March 12, 2016.

Therefore, I find that the tenants' application is dismissed and that the 10 day Notice to end tenancy for unpaid rent issued on February 25, 2016 is of full force and effect.

Section 55 of the Act provides:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must** grant to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

(Emphasis added)

Pursuant to section 55(1) of the Act, the landlord has been granted an Order of possession that is effective two days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The tenants' application is dismissed.

The landlord is entitled to an Order of possession.

This decision is final and binding on the parties and 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: April 19, 2016

Residential Tenancy Branch