



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, CNR

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause.

The Tenant stated that on May 06, 2016 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents.

On May 17, 2016 the Tenant submitted an Amendment to an Application for Dispute Resolution, in which he applied to set aside a Notice to End Tenancy for Unpaid Rent. The Tenant stated that on May 24, 2016 or May 25, 2016 this document was left in the Landlord's mail box. The Agent for the Landlord acknowledged receipt of this document.

On May 26, 2016 the Landlord submitted 28 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was posted on the Tenant's door on May 26, 2016. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

At the outset of the hearing the Agent for the Landlord stated that she has been incorrectly named on the Application for Dispute Resolution and that Mainstreet Equity Corp. is the Landlord of this rental unit. The Tenant acknowledged that the Agent for the Landlord is the building manager and that Mainstreet Equity Corp. is the Landlord of this rental unit.

As the parties agree that Mainstreet Equity Corp. is the Landlord of this rental unit and the Landlord is represented at these proceedings, the Tenant's Application for Dispute Resolution is amended by removing the Agent for the Landlord as a respondent and naming Mainstreet Equity Corp. as the respondent.

Issue(s) to be Decided

Should a Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, and/or a Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Act*, be set aside?

Background and Evidence

The Tenant and the Agent for the Landlord agree that:

- the tenancy began on May 01, 2015,
- the Landlord and the Tenant signed a written tenancy agreement, a copy of which has been submitted in evidence by the Landlord;
- monthly rent is due by the first day of each month;
- the Tenant agreed to pay \$15.00 per month for insurance;
- sometime after the tenancy began the Tenant agreed to pay \$10.00 per month for parking; and
- the Tenant is currently living in the rental unit.

The Tenant stated that:

- when this tenancy began the monthly rent was \$688.00;
- sometime in late April of 2016 the Agent for the Landlord told him that rent will be \$750.00 per month, effective May 01, 2016;
- he received a letter from the Landlord, dated March 17, 2016, in which the Tenant was advised that his “rental incentive” expires on April 30, 2016;
- he thinks \$750.00 in rent is too much;
- he did not pay any rent when it was due on May 01, 2016;
- he found a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit which declared that he must vacate the rental unit on May 23, 2016, although he cannot recall when he located the Notice;
- the Notice to End Tenancy declared that the Tenant had failed to pay \$750.00 in rent that was due on May 01, 2015;
- on May 17, 2016 he left a cheque, in the amount of \$703.00, in the Landlord’s mail box;
- on June 01, 2016 he left a cheque, in the amount of \$703.00, in the Landlord’s mail box; and
- the \$703.00 cheques included a \$15.00 insurance payment and the \$688.00 in rent he feels was due on May 01, 2016 and on June 01, 2016.

The Agent for the Landlord stated that:

- when this tenancy began the monthly rent was \$750.00;
- the parties signed a Rental Incentive Agreement which declares that the Tenant will receive a “monthly rental concession in the amount of \$62.00” for the period between May 01, 2015 and April 30, 2016;
- the Tenant was provided with a letter, dated March 17, 2016, in which the Tenant was advised that his “rental incentive” expires on April 30, 2016;
- sometime in March of 2016 she told the Tenant that rent will be \$750.00 per month, effective May 01, 2016;
- the Tenant did not pay any rent when it was due on May 01, 2016;
- on May 13, 2016 she posted a Ten Day Notice to End Tenancy on the door of the rental

- unit, which declared that the Tenant must vacate the rental unit on May 23, 2016;
- the Notice to End Tenancy declared that the Tenant had failed to pay \$750.00 in rent that was due on May 01, 2015;
- the Landlord did not receive the \$703.00 cheque the Tenant allegedly left in the Landlord's mail box on May 17, 2016; and
- the Landlord did not receive the \$703.00 cheque the Tenant allegedly left in the Landlord's mail box for rent for June of 2016.

Analysis

On the basis of the signed tenancy agreement submitted in evidence, I find that the Tenant agreed to pay monthly rent of \$750.00 by the first day of each month.

On the basis of the signed Rental Incentive Agreement submitted in evidence, I find that the Landlord agreed to reduce the monthly rent by \$62.00 for the period between May 01, 2015 and May 30, 2016.

On the basis of the undisputed testimony and the letter dated March 17, 2016, I find that the Tenant was informed that his "rental incentive" expires on April 30, 2016 and that his rent would be \$750.00, effective May 01, 2016.

As the period of the "rental incentive" expired on April 30, 2016 I find that on May 01, 2016 the Tenant became obligated to pay the full amount of rent due in accordance with the tenancy agreement, which is \$750.00. The rent of \$750.00 was established at the start of the tenancy and does not, therefore, constitute a rent increase, even though the Tenant had not been required to pay that amount prior to May 01, 2016.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days, by providing proper written notice, if rent is not paid when it is due. On the basis of the undisputed evidence I find that the Tenant did not pay any of the rent when it was due on May 01, 2016 and that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on May 13, 2016. I therefore find that on May 13, 2016 the Landlord had the right to end this tenancy pursuant to section 46(1) of the *Act*.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Notice to End Tenancy that was posted on May 13, 2016 is deemed to have been received by the Tenant on May 16, 2016.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on May 16, 2016 I find that the earliest effective date of the Notice was May 26, 2016.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Ten Day Notice to End Tenancy was May 26, 2016.

Section 46(4) of the *Act* stipulates that a Ten Day Notice to End Tenancy has no effect if the tenant pays the overdue rent within 5 days after receiving a Ten Day Notice to End Tenancy.

Even if I accepted the Tenant's testimony that on May 17, 2016 he gave the Landlord a cheque for \$703.00, I would conclude that the Ten Day Notice to End Tenancy remained effective. This is based on my determination that the Tenant would still owe \$47.00 in rent for May of 2016 if the Tenant paid \$703.00 for that month.

Section 46(2) of the *Act* stipulates that a Ten Day Notice to End Tenancy must comply with section 52 of the *Act*. I have reviewed the Ten Day Notice that is the subject of these proceedings and am satisfied that the Notice complies with section 52 of the *Act*.

As the Landlord has established grounds to end the tenancy pursuant to section 46(1) of the *Act* and the Ten Day Notice to End Tenancy that was posted to the Tenant's door on May 13, 2016 remains effective, I dismiss the Tenant's application to set aside the Ten Day Notice to End Tenancy.

Section 55(1) of the *Act* stipulates that if a tenant applies to set aside a Notice to End Tenancy, I must grant an Order of Possession to the landlord if Notice to End Tenancy complies with section 52 of the *Act* and I dismiss the application to set aside the Notice. I therefore grant the Landlord a Order of Possession.

As this tenancy is ending on the basis of the Ten Day Notice to End Tenancy that was posted on the Tenant's door on May 13, 2016, I find there is no need to consider the Tenant's application to set aside the One Month Notice to End Tenancy.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon 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.

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: June 07, 2016

Residential Tenancy Branch