



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR MNR MNDC

Introduction

The tenant applied under the *Residential Tenancy Act* (the “*Act*”) to originally cancel a 1 Month Notice to End Tenancy for Cause which the parties mutually agreed did not exist, but did confirm that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 22, 2016 (the “10 Day Notice”) did exist. As a result, the parties agreed to change the tenant’s Application pursuant to section 64(3) of the *Act* from a request to cancel a 1 Month Notice to a 10 Day Notice. In addition, the tenant applied for a monetary order for money owed for damage or loss under the *Act*, regulation or tenancy agreement, and for the cost of emergency repairs.

The tenant and the landlord attended the teleconference hearing. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the rules of procedure, and testimony provided.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the 10 Day Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant’s request to set aside the 10 Day Notice at this proceeding. The balance of the tenant’s application is **dismissed, with leave to re-apply**.

Issue to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?

Background and Evidence

The parties agreed that the tenancy began in March 2016 as a month to month tenancy and that monthly rent in the amount of \$650.00 was due on the first day of each month.

The parties agree that the 10 Day Notice was received by the tenant on May 22, 2016 and was disputed by the tenant on May 26, 2016 which is within the five day timeline provided under the *Act*. There is no dispute that the tenant's May 2016 rent cheque dated May 5, 2016 could not be cashed by the landlord due to insufficient funds. The parties agreed that on May 29, 2016, the tenant finally paid May 2016 rent in the amount of \$650.00. The parties confirmed that rent for June 2016 has not been paid by the tenant.

The landlord is seeking a two-day order of possession. The effective vacancy date listed on the 10 Day Notice was May 31, 2016 and indicated that \$650.00 was due as of May 1, 2016.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice to End Tenancy for Unpaid Rent – There is no dispute that the tenant failed to pay May 2016 rent of \$650.00 until May 29, 2016 which is beyond the five day timeline provided for under the *Act* to pay the rent having received the 10 Day Notice on May 22, 2016. Section 26 of the *Act* requires that the tenant pay rent on the day that it is due in accordance with the tenancy agreement whether or not the landlord complies with the *Act*. Therefore, based on the above, I find the 10 Day Notice issued by the landlord to be **valid and is upheld** as the tenant failed to pay rent when it was due.

Section 55 of the *Act* applies and states:

Order of possession for the landlord

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.**

[my emphasis added]

Therefore, pursuant to section 55 of the *Act* **I grant** the landlord an order of possession effective 2 days after service on the tenant. I find the tenancy ended on May 31, 2016, the effective vacancy date listed on the 10 Day Notice which has passed.

I dismiss the tenant's application to cancel the 10 Day Notice as the tenant confirmed that rent was not paid when it was due as required by section 26 of the *Act* or within the five days as required when served with a 10 Day Notice.

Conclusion

The tenants' application to cancel the 10 Day Notice is dismissed.

The landlord is granted an order of possession effective 2 days after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: June 24, 2016

Residential Tenancy Branch