



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, CNR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy and to cancel two notices to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; one of the named landlords and an agent for the corporate landlord.

The tenant confirmed, at the outset of the hearing that she had not received a 1 Month Notice to End Tenancy for Cause. As such, I amend the tenant's Application for Dispute Resolution to exclude the matter of a 1 Month Notice to End Tenancy for Cause.

In addition, I note that the tenant had applied for more time to submit her Application for Dispute Resolution seeking to cancel a notice to end tenancy. From the tenant's submissions I find she received the 10 Day Notice to End Tenancy for Cause on May 2, 2016 and submitted her Application for Dispute Resolution seeking to cancel the Notice on May 5, 2016. I find that the tenant submitted her Application within the allowable 5 days after receipt of the Notice and as such does not require additional time to dispute the Notice.

Therefore, I amend the tenant's Application for Dispute Resolution to exclude the matter of more time to submit an Application for Dispute Resolution seeking to cancel a notice to end tenancy.

I also note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Sections 46 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 10 Day Notice to End Tenancy for Unpaid Rent it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the Act.

Background and Evidence

The tenant submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on August 24, 2011 for a 1 year fixed term tenancy beginning on September 1, 2011 that converted to a month to month tenancy on September 1, 2012 for a monthly rent of \$825.00 due on the 1st of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on May 2, 2016 with an effective vacancy date of May 16, 2016 due to \$825.00 in unpaid rent.

The landlord submitted that when the tenant did not pay rent on May 1, 2016 they issued the tenant the 10 Day Notice and served it to her by posting it on the rental unit door on May 2, 2016. The tenant confirmed she received the Notice on May 2, 2016.

The landlord also testified that the tenant did pay \$525.00 towards rent on May 5, 2016 and the balance of \$300.00 on May 12, 2016. The tenant did not dispute these payment dates.

The tenant submits that she had asked the landlord to make some repairs to the property that included to replace a fence that had come down and to deal with some mould issues in the residential property.

The tenant testified that she also does respite for the landlord and members of the landlords' extended family. She stated that, as result of her complaints for work to be done on the residential property, the landlords have ceased her employment. She also submitted that the landlords have spread untruths about her throughout the valley and local community and as such she can no longer get other respite work.

The tenant submitted that as a result she has lost a substantial amount of her income and cannot afford to pay the rent. She stated that all she wants is to have her employment and income back so she can continue to pay for the necessities including rent.

The landlord's limited response to the tenant's testimony was that none of these matters are relevant to the tenant's failure to pay rent. The landlord stated that the tenancy is not tied to any employment contract. The tenant did state that the tenancy was related to her employment but has provided no documentary evidence to support there is an obligation on the part of the landlord to provide employment in relation to the tenancy.

Analysis

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.

While I accept that there may be a dispute between the tenant and her landlords regarding income from work that she has done for the landlord, I find that there is no evidence before me that this income is related to any obligations under the *Act*, regulation or tenancy agreement. As such, I note that I have no jurisdiction related to that particular dispute.

However and regardless of that dispute, Section 26 requires a tenant to pay rent when it is due under the tenancy agreement. Even if the landlord has failed to comply with their obligations under the *Act*, regulations or tenancy agreement as the tenant asserts in her testimony that the landlord had failed to repair fences and deal with a mould problem, the tenant is not allowed to withhold any amount of rent unless she had authority under the *Act* to do so.

Some examples of where the tenant might have authority under the *Act* to withhold some rent include: if the tenant had overpaid a security or pet damage deposit; if the tenant had paid a rent increase that was not compliant with the *Act*; if the tenant had made emergency repairs (after following a very specific procedure; or if the tenant had an order from an Arbitrator allowing her to deduct an amount of rent.

From the tenant's testimony, I find the tenant does not have any authority under the *Act*, regulation or tenancy agreement to withhold any portion of rent.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice. While the tenant did dispute the Notice within 5 days based on my finding above, I find the tenant had no allowable reason for not paying the rent either when it was due or before the 5 days allowed after the Notice was issued to pay the rent in full.

As such, I find the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on May 2, 2016 is enforceable and the tenancy has ended. I, therefore, dismiss the tenant's Application for Dispute Resolution.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the

effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on May 2, 2016 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

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: June 07, 2016

Residential Tenancy Branch