



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cary Lentz Property Man. Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

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

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

I 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 Section 46 of the *Act*.

Background and Evidence

The parties agreed the tenancy began on April 1, 2016 as a 12 month fixed term tenancy for a monthly rent of \$695.00 due on the 1st of each month with a security deposit of \$347.50 paid.

The tenant submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on June 15, 2016 with an effective vacancy date of June 25, 2016 citing the tenant owed \$695.00 owed as of June 1, 2016. The tenant acknowledged receiving the Notice on June 15, 2016.

The parties agreed the tenant failed to pay the full amount of rent owed for May 2016. They also agreed the tenant had sought to have the landlord allow him to use his paid security deposit to cover the balance of rent for May 2016. The landlord did not agree to this.

The tenant then paid the landlord \$347.50 on May 31, 2016 and a receipt was issued by the landlord indicating the payment was for ½ month rent for June 2016. The landlord submitted in the hearing that this was an error and it should been applied to the unpaid portion of May 2016.

The landlord submitted that as a result the tenant has not paid any rent for the month of June 2016. The tenant disagrees but does acknowledge that he did not pay ½ month's rent for May 2016 and ½ month's rent for June 2016. I note, however, the total amount of unpaid rent for May and June 2016 totals the equivalent of 1 month's rent.

The parties also agreed that despite the tenant's offer to pay ½ month's rent for July 2016 the landlord has not received any payment for July 2016. The parties agreed the tenant owes the landlord rent in the amount of \$1,390.00.

The parties agreed that the tenant had advised the landlord that he was waiting for his full pension to kick in before he can start paying full month rent. The tenant testified that he is currently receiving 40% of his pension and when he turns 65 he will receive 100%. The tenant testified that he turns 65 in January 2017.

Analysis

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*.

Based on the testimony and evidence of both parties I find that on the date the landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent (June 15, 2016) the tenant owed the landlord the equivalent of 1 month's rent or \$695.00.

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. I accept the tenant submitted an Application for Dispute Resolution seeking to cancel the notice within 5 days of receipt of the Notice – June 20, 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 rights include an overpayment of a security deposit; for the payment of emergency repairs (with very specific limitations); or by order of an Arbitrator.

Also based on the testimony of both parties the tenant has not paid the full amount of any outstanding within 5 days of receiving the Notice and has not provided any evidence that he had any authority to withhold any payment or portion of payment from the landlord.

As a result, I find the Notice, as issued, is a valid and enforceable notice and the tenant must vacate the rental unit pursuant to it. As such, I dismiss the tenant's Application for Dispute Resolution in its entirety.

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 June 15, 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: July 18, 2016

Residential Tenancy Branch