



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, RR, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; an order to have the landlord complete repairs; and a rent reduction.

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

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for Unpaid Rent and the continuation of this tenancy is not sufficiently related to the tenant's claim for repairs and a rent reduction. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rest largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss the tenant's claim for repairs and a rent reduction. I grant the tenant leave to re-apply for these other claims.

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 and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 67, and 72 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause 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 parties agreed the tenancy began in approximately 2004 when the tenant moved into the rental unit with his son. The tenant confirmed that his son moved out of the rental unit shortly after that and he had a roommate move into the unit with him.

The tenant submitted that rent was \$300.00 due on the 1st of each month but the landlord stated that rent was \$600.00 per month.

The tenant clarified that the rental unit is a 2 bedroom townhouse and that he had paid the landlord \$300.00 per month and his roommate paid \$300.00 per month.

As a result of an assault the tenant's roommate has had to move out of the rental unit and a no contact order has been issued by the courts. The roommate's belongings are still in the rental unit.

The parties agree that the tenant has not paid any rent for the months of April, May, June and July 2016. The landlord submits the tenant has also not paid \$300.00 for the month of March 2016.

The tenant submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on June 4, 2016 with an effective vacancy date of June 14, 2016 due to unpaid rent in the amount of \$2,100.00.

The tenant submitted that he should not have to pay his roommate's rent but that he has told the landlord that once the landlord cleans up the roommate's belongings and makes some repairs to the rental unit he will take over the full rent.

The tenant also stated that he has not even paid his portion of the rent for the last 4 months because the landlord insists on receiving the full \$600.00 or he will end 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.

From the testimony of both parties I find that the tenancy agreement, while verbal, is between the landlord and the tenant for the rental of the entire townhouse and that despite the problems with his former roommate the tenant is responsible for the payment of rent in the amount of \$600.00.

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 of both parties I find the tenant has failed to pay any amount of rent for the months of April, May, and June 2016. Even if I had not found that the tenant was solely responsible for the full rent of \$600.00 the tenant has not paid even the portion of rent that he submitted was his responsibility.

I find that the tenant has presented no evidence to establish that he has authority under the *Act* to withhold any portion of the rent. As such, I find that on June 4, 2016 the tenant did owe the landlord at least some rent and as a result, I find the 10 Day Notice to End Tenancy is a valid notice and the tenant must vacate the rental unit.

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 4, 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.

As the tenant has been unsuccessful in his Application for Dispute Resolution I dismiss his claim to recover the filing.

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 07, 2016

Residential Tenancy Branch