



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46 of the *Residential Tenancy Act* (the Act).

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by his agent.

The agent acknowledged service of the tenant's dispute resolution package and consented to my consideration of the tenant's application as amended. The tenant admitted service of the 10 Day Notices dated 2 and 16 June 2016.

Preliminary Issue – Order for Evidence During Hearing

The tenant stated that he had provided both 10 Day Notices when he filed his application and amendment. I could not locate copies of these notices.

Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) provides that I may direct that evidence be submitted after the commencement of a hearing. As both parties had copies of the 10 Day Notices, there is no undue prejudice to the parties by my acceptance of the 10 Day Notices after the hearing.

I ordered that the landlord provide these notices by fax. I received them after the hearing.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began in or about May 2015. Monthly rent in the amount of \$700.00 is due on the fifteenth.

The tenant admits that he did not pay rent due 15 May 2016 or 15 June 2016 with total rent arrears of \$1,400.00. The agent testified that the landlord believes that rent arrears are in excess of this amount, but agreed, at a minimum, the tenant had \$1,400.00 in arrears.

On 2 June 2016, the landlord served the tenant with the first 10 Day Notice. That notice was dated 2 June 2016 and set out an effective date of 13 June 2016. The notice set out that the tenant had failed to pay rent in the amount of \$2,100.00 that was due 1 June 2016. The agent admitted that this notice was invalid on the basis of the incorrect rent due date.

On 16 June 2016, the agent personally served the tenant with the second 10 Day Notice. That notice was dated 16 June 2016 and set out an effective date of 26 June 2016. The notice set out that the tenant had failed to pay rent in the amount of \$1,400.00 that was due 15 June 2016.

The agent testified that he is not aware of any reason that would entitle the tenant to deduct any amount from rent.

The tenant testified as to various personal circumstances that prevented him from paying rent when due.

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not provide evidence that he was entitled to deduct any amount from rent. The tenant's personal circumstances, while sympathetic, are not prescribed reasons for failing to pay rent when due.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The agent testified that the tenant failed to pay rent due 15 May 2016 and 15 June 2016. The tenant admits that he did not pay May's rent and June's rent.

As the tenant has failed to pay his rent in full when due, I find that the 10 Day Notice issued 16 June 2016 is valid and dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply.

Subsection 55(1) of the Act sets out that 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.

Section 52 of the Act reads:

In order to be effective, a notice to end tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

The 10 Day Notice complies with the requirements set out in section 52 of the Act. In accordance with subsection 55(1) of the Act, I issue the landlord an order of possession effective two days after it is served upon the tenant.

After the hearing concluded, the agent struck a bargain with the tenant. In the event the tenant pays \$700.00 towards the rent arrears, he will be permitted to remain in the rental unit until 31 July 2016.

Conclusion

The tenant's application is dismissed.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: July 11, 2016

Residential Tenancy Branch