



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, FF; MT, CNC, CNR, AS

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent and cause pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the Act for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- cancellation of the landlord's 1 Month Notice pursuant to section 47; and
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65.

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 parties acknowledged service of the opposing party's dispute resolution package including all evidence.

The tenant admitted that he received the 10 Day Notice and 1 Month Notice on 4 June 2016.

Preliminary Issue – Amendment to 10 Day Notice

The 10 Day Notice delivered to the tenant indicated that there was \$950.00 in rent arrears. The landlord and tenant agree that as at 2 June 2016 the arrears were \$250.00. The landlord requested to amend the 10 Day Notice to reflect the amount of rent arrears owed as at 2 June 2016. The tenant testified that he understood he had rent arrears in the amount of \$250.00 on 2 June 2016.

Subsection 68(2) of the Act allows me to amend a notice given under the Act that does not comply with the Act. In this case, the landlord mistakenly included the full amount due on the 10 Day Notice and not the arrears amount. This mistake does not go to the substance of the 10 Day Notice, that is, a 10 Day Notice could have still been validly issued for June's rent on 2 June 2016. For these reasons, I am exercising my discretion to amend the 10 Day Notice to the correct amount of outstanding rent.

Issue(s) to be Decided

Is the tenant entitled to more time to apply to cancel the 10 Day Notice? Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession? Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the tenant entitled to an order permitting the tenant to assign or sublet the rental unit? Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

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

This tenancy began 1 July 2014. Monthly rent in the amount of \$950.00 is due on the first. The landlord continues to hold the tenant's security deposit in the amount of \$475.00. The tenancy agreement was originally between the landlord, the tenant, and his former roommate. At some point in the tenancy, the roommate vacated.

On 26 May 2016, the landlord served the tenant with the 1 Month Notice by posting that notice to the tenant's door. The 1 Month Notice was dated 26 May 2016. The 1 Month Notice set out that it was given as:

- the tenant is repeatedly late paying rent;
- the tenant or person permitted on the property by the tenant has put the landlord's property at significant risk; and

- breach of a material term of the tenancy agreement that was not corrected within a reasonable time.

The landlord testified that the tenant paid rent late December 2015, January 2016, April 2016 and May 2016. The landlord testified that as a result of the tenant's failure to pay utility invoices the electricity has been disconnected to the rental unit. The landlord submits that this is a cause of risk to the property and is a breach of the tenancy agreement.

The tenant paid \$700.00 to the landlord on 1 June 2016.

On 2 June 2016, the landlord served the tenant with the 10 Day Notice by posting that notice to the tenant's door. The 10 Day Notice served to the tenant was dated 2 June 2016 and set out an effective date of 16 June 2016. The 10 Day Notice (as amended) set out that the tenant owed \$250.00 in rent arrears that was due 1 June 2016.

The landlord testified that he did not have access to a photocopier. The landlord testified that when he returned to his house from the rental unit he did his best to copy out the same information from the 10 Day Notice and 1 Month Notice to second forms. The landlord testified that he made errors and the copies were not exact.

The tenant paid \$250.00 to the landlord on 13 June 2016. The landlord issued a receipt to the tenant that set out that the \$250.00 was received on the basis of the tenant's use and occupancy only. On 1 July 2016 the tenant paid \$950.00 to the landlord. The landlord issued a receipt to the tenant indicating that this payment was received for the tenant's use and occupancy only.

The tenant testified that he was unable to file for dispute resolution until 14 June 2016 because he suffers from depression and was incapacitated by related symptoms.

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

The tenant testified that the reason that his rent was in arrears was because the landlord did not sign the shelter information form for the tenant's new roommate and because the tenant's previous roommate was consistently late with rent.

The tenant testified as to various mistakes in the notices. The tenant submits that if the tenancy ends it will create great hardship for him and his new roommate.

The tenant asked to have EC testified in support of his application. The tenant informed me that EC would confirm the content of the tenant's testimony. In particular, EC would confirm that the tenant's testimony that the roommate was the cause of the late payments and that the end of the tenancy would cause hardship. I informed the tenant at the hearing that as neither of these facts was in dispute and I accepted the tenant's testimony on these points. I declined to hear from EC as she would not add any new and relevant evidence.

Analysis

The tenant has not provided any evidence that would defeat the presumption of joint tenancy. Accordingly, the tenant was jointly and severally responsible for the payment of rent under the tenancy agreement, which means that it does not matter if his roommate was the cause of the late rent payments.

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 only paid \$700.00 to his rent on 1 June 2016. There is no evidence before me that indicates the tenant was entitled to deduct any amount from rent. The tenant's personal circumstances are not relevant for the purpose of the 10 Day Notice.

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 tenant points to various inconsistencies between the 10 Day Notice served to the tenant and the 10 Day Notice provided by the landlord into evidence. These inconsistencies do not go to the substance of the 10 Day Notice. At all material times, the tenant understood that he was receiving the 10 Day Notice as he had failed to pay his rent in full on 1 June 2016. For the purposes of these applications, the 10 Day Notice served to the tenant is the relevant notice and the notice on which I have based this decision.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant paid the rent arrears nine days after receiving the 10 Day Notice. As the tenant has failed to pay his rent in full when due, I find that the 10 Day Notice issued 2 June 2016 is valid and dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply. As the tenant's application to cancel the 10 Day Notice is dismissed, the landlord was entitled to possession of the rental unit on 16 June 2016,

the effective date of the 10 Day Notice. The tenant has paid for his use and occupancy of the rental unit for the period ending 31 July 2016. The form and content of the 10 Day Notice complies with section 52 of the Act. On this basis, I issue an order of possession effective one o'clock in the afternoon on 31 July 2016.

As the tenancy is ending pursuant to the 10 Day Notice, I decline to consider the validity of the 1 Month Notice as the issues are moot. Further, as the tenancy is ending the tenant is not permitted to assign or sublet the rental unit as he no longer has any interest in the rental unit to assign or sublet. As I have found the 10 Day Notice is valid on its merits, it is not necessary for me to consider the tenant's application for more time.

As the landlord has been successful in this application, he is entitled to recover his filing fee paid for this application from the tenant.

Conclusion

The tenant's application is dismissed.

I issue a monetary order in the landlord's favour in the amount of \$100.00. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlord is provided with a formal copy of an order of possession effective 31 July 2016. 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 20, 2016

Residential Tenancy Branch

