



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, CNR, AAT, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for an order to set aside notices to end tenancy for cause and for non-payment of rent. The tenant also applied for the recovery of the filing fee and for an order directing the landlord to allow access to or from the unit for the tenant and the tenant's guests.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Does the landlord have reason to end the tenancy or should the notices to end tenancy be set aside and the tenancy be allowed to continue? Has the landlord denied access to and from the unit for the tenant or his guests?

Background and Evidence

The tenancy started on September 15, 2016. The monthly rent is \$550.00 due in advance on the first day of the month. Prior to moving in, the tenant paid a security deposit of \$275.00. The rental unit is located in the basement of the landlord's home. The landlord lives upstairs.

The tenant filed into evidence copies of the two notices to end tenancy. The notice to end tenancy for cause is dated October 01, 2016. The tenant stated that he received this notice on November 01, 2016. The landlord was very firm in her testimony that she served the notice to the tenant on October 01, 2016. The tenant stated that the landlord gave him a hand written notice to end tenancy on October 01, and then served him with the legal notice in the approved format on November 01, 2016.

The landlord did not file any documents to support the reasons for the notice to end tenancy for cause. She testified that the tenant has additional occupants in the rental unit and the tenant denied the allegation. The tenant stated that his girlfriend visited him and stayed over on some nights. The landlord also spoke of noise disturbances by the tenant.

The ten day notice to end tenancy for non-payment of rent is dated November 01, 2016. The landlord testified that the tenant was late paying rent for the months of November and December 2016. Both parties agreed that the tenant paid rent for November. The tenant stated that he paid rent on November 04, 2016 and was not provided with a receipt. The landlord could not recall the date the tenant paid rent.

The landlord stated that the tenant was also late in December and that she had served the tenant with a notice dated December 01, 2016. Again both parties agreed that the tenant had paid rent, but the landlord could not recall the date that rent was paid.

Analysis

The tenant made this application on November 04, 2016 to dispute both the notices that he had received for cause and for non-payment of rent.

The tenant testified that he paid rent for November on November 04, 2016 and since the landlord could not recall the date that the tenant paid rent, I accept the tenant's testimony that he paid rent on November 04, 2016.

In addition, since rent is due on the first of each month, the landlord can only serve a notice to end tenancy for non-payment of rent on the day after rent is due which is the second of the month. The notice is dated November 01, 2016 and the tenant stated that he was served with this notice on that date.

The tenant stated that the landlord did not provide a receipt for rent paid. Therefore I am unable to determine whether the landlord accepted rent for use and occupancy only or reinstated the tenancy.

Based on the above I find that the tenant received the notice to end tenancy for unpaid rent, on November 01, 2016 and paid rent within five days of receiving the notice to end tenancy. Therefore pursuant to Section 46 to set aside the notice to end a residential tenancy, I find that the tenant paid rent within the legislated time frame and therefore the notice to end tenancy for nonpayment of rent is set aside.

Based on the sworn testimony of both parties, I find that the tenant received a notice to end tenancy for cause. However the parties offered contradictory testimony regarding the date the tenant was served with the notice. I must now determine the date that the tenant received this notice and this determination is based on a balance of probabilities.

In making this determination, I have considered the fact that the notice is dated October 01, 2016 and was filed into evidence by the tenant.

The landlord was very firm in her testimony that she had served the tenant with this notice on October 01, 2016. On a balance of probabilities, it is more likely than not that a landlord would serve a notice to end tenancy dated October 01, 2016 on October 01, 2016. The landlord would have no reason to hold on to the notice and serve it to the tenant on November 01, 2016.

Based on the above, I find on a balance of probabilities that the tenant was served with a one month notice to end tenancy for cause, on October 01, 2016 and made application to dispute the notice on November 04, 2016 which is beyond the ten day legislated time frame, that the tenant has to dispute the notice.

Under section 47(4) of the Act, the tenant had to dispute the notice within 10 days, or by October 11, 2016. The tenant filed his application on November 04, 2016, which 24 days past the time required by the *Act* to file it. Based on the above, I find the tenant failed to file his application to dispute the notice, in a timely manner.

Accordingly I uphold the notice to end tenancy. During the hearing the landlord agreed to allow the tenancy to continue until January 31, 2016.

Section 55 of the *Residential Tenancy Act* addresses an order of possession for the landlord and states:

55 (1) 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.

In this case, I find that the landlord served the tenant with a notice to end tenancy that complies with section 52 (form and content of notice to end tenancy). I have determined that the tenant did not apply in a timely manner to dispute the notice and therefore I have upheld the notice to end tenancy.

Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Since the tenancy is ending, the tenant's application for an order directing the landlord to allow access to or from the unit for the tenant and the tenant's guests is moot and accordingly dismissed.

The tenant has not proven his claim and therefore must bear the cost of filing his application.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective on January 31, 2017.

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: December 21, 2016

Residential Tenancy Branch