



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bailey Holdings Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 46 of the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Landlord entitled to an order of possession?

Background and Evidence

The following are undisputed facts: The tenancy started on June 3, 2016. Rent of \$820.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$410.00 as a security deposit. The Tenant failed to pay rent for February 2016 and on February 20, 2017 the Landlord served the Tenant with a 10 day notice to end the tenancy for unpaid rent (the “Notice”). The Tenant has not moved out of the unit and has not paid rent for March 2017.

The Tenant states that the rent was not paid initially as the Landlord failed to provide hot water. The Tenant states that there was no hot water for 5 days. The Tenant states that subsequently the Tenant did not have the funds to pay for rent.

Analysis

Section 26 of the Act provides 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 a right under this Act to deduct all or a portion of the rent. A lack of funds does not relieve the Tenant of the obligation to pay rent as required. Based on the undisputed evidence that no rent was paid and as there is no evidence that the Tenant was granted a rent reduction for the loss of the water I find that the Notice is valid and that the Tenant is not entitled to a cancellation of the Notice. The Tenant must therefore vacate the unit. I dismiss the Tenant's application and note that the Tenant remains at liberty to make an application in relation to any act or negligence of the Landlord that caused losses to the Tenant during the tenancy.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that In order to be effective, a notice to end a 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.

Considering that the required form and content is contained on the Notice and given the dismissal of the Tenant's application I find that the Landlord is entitled to an order of possession. The Landlord is at liberty to make an application to claim unpaid rent.

Conclusion

The Tenant's application is dismissed.

I grant an Order of Possession to the Landlord. The Tenant must be served with this **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.

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: March 29, 2017

Residential Tenancy Branch