



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

matter regarding METRO VAN
DECISION

Dispute codes CNR

Introduction

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

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide sworn testimony and present evidence.

Issues

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

Background and Evidence

The tenancy began on July 1, 2012 with a monthly subsidized rent of \$910.00 payable on the 1st day of each month. The tenant paid a security deposit of \$560.50 and a pet deposit of \$560.50 at the start of the tenancy.

The parties agreed that the tenant received the 10 Day Notice to End Tenancy for Unpaid Rent on February 2, 2017. The outstanding rent amount as per the Notice was \$429.00 which was due on February 1, 2017. A copy of the 10 Day Notice was not on file but the landlord provided oral testimony with respect to the form and content of the Notice which was not disputed by the tenant.

The landlord testified that the tenant did not pay the full amount of the arrears indicated on the Notice within five days of being served. The tenant paid the balance outstanding on February 17, 2017 and was issued a receipt for use & occupancy only. The tenant acknowledged the outstanding rent was not paid within 5 days after receiving the notice.

The tenant's application to cancel the 10 Day Notice was filed on February 6, 2017 within the time period permitted under the Act.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 26 of the Act requires 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.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application must be dismissed as the tenant acknowledged rent was not paid within 5 days after receiving the notice nor did the tenant have a right under this Act to deduct all or a portion of the rent.

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*.

I accept the testimony of the landlord with respect to the form and content of the Notice and find it complies with the requirements of the Act; accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 06, 2017

Residential Tenancy Branch