



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, RP

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 32.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that he served the landlord with the notice of hearing package in his mailbox on February 9, 2017. The landlord confirmed receipt of the package as claimed. Neither party submitted any supplemental documentary evidence. Neither party raised any issues. As both parties have attended and have confirmed receipt of the notice of hearing package, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenant has applied for a monetary order for money owed or compensation for damage or loss and for an order for the landlord to make repairs regarding flooding. As these sections of the tenant's application are unrelated to the main section which is to cancel the notice to end tenancy issued for unpaid rent, I dismiss these sections of the tenant's claim with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

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 applicant's claim and my findings are set out below.

Both parties confirmed that this tenancy began sometime in 2015 on a month-to-month basis and the monthly rent is \$750.00 payable on the 15th day of each month. A security deposit of \$375.00 was paid.

The tenant seeks an order cancelling the 10 Day Notice dated February 2, 2017. The tenant clarified that the landlord had refused to deal with repairs and flooding issues and as such the landlord was warned that he would not pay the rent until these issues were rectified.

The tenant confirmed that he was served with the 10 Day Notice dated February 2, 2017 in person on February 2, 2017. The 10 Day Notice states that the tenant failed to pay rent of \$750.00 that was due on January 15, 2017 and sets out an effective end of tenancy date of February 12, 2017.

The tenant confirmed in his direct testimony that no rent for January 2017 was paid. The landlord provided undisputed affirmed direct testimony that as of the hearing date no rent has been paid by the tenant.

Analysis

Section 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 amounts for repairs that he had conducted (pursuant to subsection 33(3)) or as a result of a prior order from the Residential Tenancy Branch.

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 landlord testified that the tenant failed to pay rent for January. The tenant admits that he did not pay January's rent.

As the tenant has failed to pay his rent in full when due, I find that the 10 Day Notice issued February 2, 2017 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 February 12, 2017, the effective date of the 10 Day Notice. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed without leave to reapply.

The 10 Day Notice is upheld. The landlord is granted an order of possession pursuant to section 55 of the Act.

This order must be served upon the tenant. 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 08, 2017

Residential Tenancy Branch