



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

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.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was served with the notice of hearing package via Canada Post Registered Mail. The landlord confirmed receipt of the package in this manner on February 13, 2017. The landlord served the tenant with the submitted documentary evidence in person on February 28, 2017. The tenant confirmed receipt of this package as claimed. The tenant served the landlord with the submitted documentary evidence in person on March 6, 2017. The landlord confirmed receipt of this package as claimed. As both parties have attended and have confirmed receipt of the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

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.

This tenancy began on December 6, 2012 as per the submitted copy of the signed tenancy agreement dated December 5, 2012. The monthly rent is \$1,350.00 payable on the 1st day of each month. A security deposit of \$675.00 was paid.

Both parties confirmed that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent dated February 2, 2017 in person on February 3, 2017. The 10 Day Notice states that the tenant failed to pay rent of \$2,800.00 that was due on February 1, 2017 and sets out an effective end of tenancy date of February 12, 2017.

The tenant provided undisputed affirmed testimony that he has not paid the rent owed as claimed by the landlord as he is in dispute over money owed regarding fee for services and utilities owed by the landlord.

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 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 totalling \$2,800.00. The tenant admitted that he did not pay rent owed as claimed by the landlord over a dispute over money owed for services and utilities.

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. Pursuant to Section 55 of the Act, the 10 Day Notice is upheld. Pursuant to Section 55 of the Act, the landlord is entitled to possession of the rental unit on February 15, 2017, the corrected 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 is dismissed.

The 10 Day Notice dated February 2, 2017 is upheld. The landlord is granted an order of possession for unpaid rent.

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 09, 2017

Residential Tenancy Branch