



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MT

Introduction

This hearing was convened in response to an application by the applicant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- cancellation of the landlord’s 10 Notice to End Tenancy for Unpaid Rent (“10 Day Notice”); and
- more time to make an application to cancel the landlord’s Notice to End Tenancy, pursuant to section 66.

The building owner “E.S.”, and occupant “D.J.”, appeared at the hearing. Both parties who attended the hearing were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Preliminary Matters

In evidence before me was testimony from both E.S. and D.J. that D.J. was not the person named as the tenant in the tenancy agreement. D.J. is an occupant of the rental premises who appeared at the hearing.

Residential Tenancy Policy Guideline #19 notes “the definition of landlord in the *Act* does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the *Residential Tenancy Act*.”

At the outset of the hearing, D.J. stated that he was unsure when the 10 Day Notice was served on the named tenant, A.W.; however, D.J. stated that he “came home” on February 4, 2017 and noticed it on the kitchen table.

On February 10, 2017 D.J. served the landlord with an Application for Dispute Resolution in person. Pursuant to section 89 of the *Act*, the landlord is found to have been served on February 10, 2017.

During the course of the hearing, D.J. and E.S. explained that the named party on the 10 Day Notice, A.W., had vacated the property on February 2, 2017. Both parties acknowledged that the tenancy agreement was in the name of A.W., and he was the individual identified on the 10

Day Notice. D.J. noted that he began occupying the rental unit approximately “8 to 12 months ago” and had previously paid some rent to the building manager, T.B.

Issue(s) to be Decided

Can D.J. cancel the 10 Day Notice? If not is the landlord entitled to an Order of Possession? Should the tenant be granted more time to file his application for dispute resolution?

Background and Evidence

D.J. testified that he understood the tenancy between A.W. and the landlord began “about a year and half ago”. He was unsure whether a security deposit had been paid but stated that rent was \$750.00 per month. D.J. said he paid the rent directly to the landlord for January but had not paid \$500.00 in rent for February and he acknowledged that March rent was also outstanding. Prior to this, D.J. paid rent to A.W.

D.J. noted that the named party in the 10 Day Notice was the tenant A.W. Building owner E.S. stated that A.W. had allowed D.J. to live on the premises without his knowledge and that D.J. was an illegal occupant of the rental unit. Furthermore, E.S. stated that even if D.J. were not an illegal occupant that rent remained outstanding for February and March.

Analysis

Insufficient evidence exists demonstrating that a tenancy was established between D.J. and the landlord. I find that D.J. was an occupant who paid rent to the tenant A.W. and on a single occasion, paid rent to the property manager. As D.J. was an occupant, pursuant to section 6 of the *Act*, he has no standing to make an application.

Pursuant to section 62 of the *Act* D.J.'s application to dispute the 10 Day Notice is dismissed.

The named tenant, A.W., paid no rent for February or March 2017 and testimony provided to the hearing indicates that under section 44(1)(d) of the *Act* the tenancy ended when A.W. abandoned the rental unit in February 2017.

The tenant named on the tenancy agreement failed to pay the unpaid rent within five days of the deemed date of receiving the 10 Day Notice to End Tenancy. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of the tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by February 12, 2017. I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The occupant has failed to prove that a tenancy was established. The tenant on the tenancy agreement moved out on February 2, 2017. Therefore, I am granting the landlord an Order of Possession to be effective two days after notice is served to 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 17, 2017

Residential Tenancy Branch