



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The landlord acknowledged receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord was duly served with the Application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

During the hearing, the tenant brought to my attention that he was applying to cancel the 10 Day Notice to End Tenancy for Unpaid Rent ('the 10 day Notice') that was personally served to him on March 1, 2017, and not a 1 Month Notice as indicated in his Application. The landlord did not oppose the amendment, and accordingly the tenant's Application is amended to reflect that the tenant is applying to cancel the landlord's 10 Day Notice pursuant to section 46 of the *Act*. As the tenant acknowledged receipt of the 10 Day Notice, the tenant is considered duly served with the 10 Day Notice in accordance with section 88 of the *Act*.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover her filing fee from the landlord?

Background and Evidence

The landlord testified that this 1 year, fixed-term tenancy began on September 10, 2016, with monthly rent set at \$2,500.00 per month. The landlord had only collected \$250.00 of the \$1,250.00 deposit as the tenant failed to pay the remainder. A copy of the written tenancy agreement was submitted in evidence.

The landlord issued the 10 Day Notice on March 1, 2017 as the tenant failed to pay \$5,000.00 in outstanding rent for the months of January and February 2017. The tenant has not made any payments since the 10 Day Notice was issued, and he would provide excuses as to why he could not pay.

The landlord's witness, NG, testified in this hearing that the landlord had previously filed for dispute resolution. The landlord made an application for an Order of Possession after issuing a 10 Day Notice on October 7, 2016 for the tenant's failure to pay the October 2016 rent. The landlord was granted an Order of Possession by the Arbitrator on November 23, 2016, but the landlord had allowed the tenancy to continue on the condition that the tenant pays the outstanding rent. The landlord's witness testified that the tenant failed to pay the outstanding rent, and continues to be in arrears. NG testified that she had spoken to the tenant on March 9, 2017, after the tenant had received the March 1, 2017 10 Day Notice, and the tenant stated that he was unable to travel to pay the rent as the weather was bad. The agent testified that by March 13, 2017 no rent had been paid.

The tenant testified in the hearing that he did not recall signing any tenancy agreement, and that he requested to sign a new 18 month tenancy agreement, and pay the outstanding rent on March 6, 2017. The tenant did not dispute that he had not paid the outstanding rent as he had trouble obtaining funds in the past. The tenant testified that he had attempted to pay the outstanding rent after receiving the 10 Day Notice, but had trouble travelling as the roads were closed due to bad weather.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

- 26** (1) 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 I sympathize with the tenant that he had trouble travelling to see the landlord in March after receiving the 10 Day Notice, I note that it was undisputed that he had not paid the outstanding rent since the Notice was issued to him. Although the tenant does not recall signing the tenancy agreement, he did not dispute the fact that he owed the landlord \$2,500.00 in monthly rent for residing at the rental address.

Based on the testimony of the landlord and the tenant, I find that the tenant was served with the Notice to End Tenancy, and I find that the 10 Day Notice does comply with the form and content provisions of section 52 of the *Act*. The tenant failed to pay the full rent due on March 6, 2016, within five days of being deemed to have received the 10 Day Notice. Although the tenant did make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice, the tenant admitted that he had not paid the landlord any of the outstanding rent as required by section 26 of the *Act*. Accordingly, I dismiss the tenant's application to cancel the 10 Day Notice.

Section 55(1) of the *Act* reads as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. 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.

I dismiss the tenant's application to recover the filing fee as it is normally granted to a successful party after a hearing.

Conclusion

I dismiss the tenant's application to cancel the landlord's 10 Day Notice, and for the recovery of the filing fee for this application. I find that the landlord's 1 Month Notice is

valid and effective as of the corrected, effective date of the Notice, March 11, 2017. I, therefore, grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant and any occupant 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: April 25, 2017

Residential Tenancy Branch