



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR O OLC

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 ("10 Day Notice") pursuant to section 46; an order requiring the landlord to comply with the Act pursuant to section 62; and any other remedy appropriate under the Act.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's Application for Dispute Resolution evidence on April 14, 2017.

Issue(s) to be Decided

Should the landlord's 10 Day notice be cancelled or is the landlord entitled to an order of possession? Is the tenant entitled to an order that the landlord comply with the Act or some other remedy under the Act?

Background and Evidence

The residential tenancy agreement between these parties was not put in writing. The verbal, month to month tenancy agreement between the parties is that the tenant pays \$650.00 on the first of each month to the landlord. The landlord testified that she continues to hold the \$325.00 security deposit paid by the tenant at the outset of the tenancy.

The landlord requested an Order of Possession if the tenant is unsuccessful in his application to cancel her notice to end tenancy. The landlord testified that she issued a 10 Day Notice when the tenant failed to pay rent in March 2017. As a result, the 10 Day Notice (with an effective date of April 24, 2017) was served to the tenant in person on April 14, 2017. The landlord testified that the tenant has not paid rent for: March 2017; April 2017; or May 2017 as of the date of this hearing. .

After receiving the 10 Day Notice to End Tenancy for Unpaid Rent dated April 14, 2017, the tenant applied to cancel the 10 Day Notice on April 19, 2017. The tenant testified that he did pay rent in cash to the landlord. He testified that she did not issue a receipt to him for his rent: he testified that she never provides receipts.

The tenant submitted text correspondence between the landlord and tenant. On March 31, 2017, he wrote that he did not fill out his time sheet at work and would not be able to pay rent. He wrote that he could pay \$450.00 immediately and pay the balance before April 14, 2017. The landlord responded, "No no I need full rent". The tenant persists, saying he cannot pay any more than \$450.00 of his \$650.00 rent at this time. In a later email, the landlord relents and agrees to allow the tenant to pay the rent as he has suggested. However, the text messages that follow include multiple attempts for the landlord to speak with the tenant in person. As of April 10, 2017, the landlord accuses the tenant of avoiding meeting with the landlord. On April 13, 2017, the tenant requests his rent back in compensation for moving out and writes, "I owe nothing but 200 on Friday as I owed you..."

The tenant made similar demands during this hearing stating that all his rent should be returned to him if he agreed to vacate the residence.

Analysis

When a tenant makes an application to cancel a notice to end tenancy, the burden shifts to the landlord to justify the end of the tenancy. The landlord must prove, on a balance of probabilities that the reason they have provided to end tenancy is valid and justified. In this case, the landlord is required to prove, on a balance of probabilities that the tenant did not pay rent in accordance with the tenancy agreement.

As there is conflicting testimony from the two parties, I must consider credibility to assist in determining the outcome of this dispute. I find that, overall, the landlord testified in a calm and clear manner. She made candid admissions including that she should have had a written tenancy agreement and that she did not know she was to provide receipts for rent. She acknowledged she should know her obligations and requirements as a landlord under the Act. She also testified that she has not received any rent from the tenant since February 2017.

The tenant, in very erratic testimony that generally interrupted someone else speaking, testified that he had paid rent but that he could not offer any documentary proof. He submitted that the text message evidence supported his position that he had paid rent. However, his documentary evidence was limited to a copy of the 10 Day Notice issued

to him and text correspondence with the landlord. After a thorough review of the text correspondence, I find that the texts do not provide sufficient proof that he has paid his outstanding rent.

The tenant argued that he should be re-paid all of his rent as well as receive compensation pursuant to a 2 Month Notice before he vacates the residence. He testified that he did not receive a 2 Month Notice but that, based on the way the landlord was trying to end the tenancy, he felt he should be compensated for his troubles.

Section 26(1) of the *Act* establishes 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.”

I find that the tenant failed to pay the March 2017 rent in full within five days of receiving the 10 Day Notice to End Tenancy and has not paid rent since a partial, late payment in March 2017. The tenant acknowledged the partial payment was late. The tenant has made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice however he has provided insufficient evidence in his application to show that he has paid his rent as required pursuant to section 26 of the *Act*. I accept the testimony of the landlord that the tenant has also not paid rent for: April 2017 and May 2017. Given my finding that the tenant has not paid rent in accordance with the tenancy agreement and the *Residential Tenancy Act*, I find that the landlord is entitled to an Order of Possession.

Pursuant to section 55 of the *Act*,

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's notice to end tenancy complies with the requirements of section 52 and I dismiss the tenant's application to cancel the landlord's notice to end tenancy. In accordance with section 55(4), I grant an order of possession and a monetary order for outstanding rent to the landlord. Section 55(3) provides that I may determine the

date that the tenant is required to vacate the rental unit. Therefore, I grant an Order of Possession to the landlord dated May 31, 2017.

Conclusion

The landlord is provided with a formal copy of an **Order of Possession effective May 31, 2017**. 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: May 24, 2017

Residential Tenancy Branch