



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Crossridge Ventures Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The hearing was held on September 11, 2017, at 9:30 AM. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities

The Landlord's agent and the Tenant both attended the hearing and provided affirmed testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?

Background and Evidence

The Landlord's agent testified that the tenancy began on June 1, 2013. Rent in the amount of \$1,200.00 per month is due on the first day of each month. The Landlord holds a security deposit in the amount of \$600.00.

The Landlord's Agent and the Tenant were in disagreement on which months had not been paid. The Landlord's Agent stated that the amount listed on the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was \$4,885.00, as of June 1, 2017. He testified that this was comprised of 4 months (4x \$1,200.00) of past due rent from August, September, November, and December of 2016, plus \$85.00 in NSF fees. The Landlord's Agent testified that the amount they are now owed (at the time of this

hearing) in past due rent is only \$3,685.00 because, since issuing the 10 Day Notice, the Tenant made a payment of \$1,200.00.

The Tenant testified that he has had difficulty affording rent because of some health issues, which he stated are a result of the poor septic system in the rental unit. The Tenant testified that he had the septic system repaired in June of 2016, and paid for this himself because it had been malfunctioning for the previous 10 months. The Tenant testified that he paid \$1,165.50 to fix the septic system. The Tenant further testified that the amount he owes in past due rent is for 3 months (one month in 2014, January of 2016, and another month he couldn't recall).

Documentary evidence shows that the 10 Day Notice was served to the Tenant in person by an individual named S.C. The Tenant signed the Proof of Service Document for the 10 Day Notice on June 2, 2017, and acknowledged receipt of this document in the hearing.

Analysis

Based on the affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

Although the Landlord's Agent and the Tenant disagree on which specific months remained unpaid, both parties agree that the accrued balance of unpaid rent is for at least 3 months and at the time the 10 Day Notice was issued there was some rent owing to the landlord.

The Tenant testified that he paid \$1,165.50 to fix the septic system. However, since the amount the Tenant paid for such repairs is substantially less than the accrued balance of unpaid rent and the landlord is not seeking a monetary order for any amount of

unpaid rent, I make no findings on whether these qualify as emergency repairs, as defined by the *Act* or whether the Tenant is entitled to monetary compensation.

At the time the 10 Day Notice was issued and received by the Tenant, on June 2, 2017, I find there is sufficient evidence to demonstrate that there was unpaid rent at that time.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution.

There is no evidence before me that the Tenant did either. I find the Tenant is conclusively presumed to have accepted the end of the tenancy. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The Landlord and Tenant are granted leave to apply for dispute resolution to settle any outstanding monetary claims.

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: September 11, 2017

Residential Tenancy Branch