



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KLAHANIE PARK HOUSING SOCIETY, BC HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on October 24, 2017, and to cancel and additional rent increase.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The landlord’s agent testified that the tenant’s portion of rent is determined by BC Housing and under the annual review they determined the tenant’s portion of rent was \$1,487.00, commencing on October 1, 2017.

The landlord’s agent stated that the tenant placed a stop payment on their rent cheques and no rent has been paid for October, November and December 2017. The landlord seeks an order of possession.

The tenant testified that they received the Notice on October 24, 2017. The tenant stated that rent was not paid in full within 5 days.

The tenant testified they have not paid the landlord any rent for October, November and December 2017. The tenant stated that they did not pay any rent because they feel the landlord is not being fair as they increased their rent by 37%. The tenant acknowledged that their rent is subsidized by BC Housing.

Analysis

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

In this case, the tenant disputes a rent increase; however, under section 2 of the Residential Tenancy Act – residential Tenancy Regulation, if a tenants rent of the unit is gear to the tenant's income, such as in this case, section 41, 42 and 43 of the Act do not apply. The tenant must pay rent as determined appropriated by BC Housing. Therefore, the tenant's application to cancel a rent increase is dismissed.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

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.

...

How to end a tenancy is defined in Part 4 of the Act.

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

...

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application must be dismissed as the tenant admitted no rent has been paid for three months as they were disputing a rent increase.

However, the tenant did not have the authority under the Act to withhold any portion of their rent. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so. I find the tenant breached the Act, when they failed to pay the rent. Therefore, I dismiss the tenant's application to cancel the Notice.

As the tenant's application is dismissed and the landlord requested an order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request.

Order of possession for the landlord

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 an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenant's application to cancel a rent increase is dismissed without leave to reapply.

The tenant failed to pay rent. The tenant's application to cancel the Notice is dismissed without leave to reapply. The landlord is granted an order of possession.

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: December 22, 2017

Residential Tenancy Branch