



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNRT, FFT

Introduction

The tenant submitted an Application for Dispute Resolution (“application”) under the *Residential Tenancy Act* (“Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 2, 2018 (“10 Day Notice”) and to recover the cost of the filing fee.

The tenant and both landlords attended the teleconference hearing. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the rules of procedure, and testimony provided; however, I have only referred to the relevant evidence below.

The landlords confirmed receiving the tenant’s documentary evidence and that they had the opportunity to review that evidence prior to the hearing. I have not considered the landlords’ documentary evidence as the tenant claims that he did not receive the landlords’ documentary evidence.

Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

In addition to the above and by consent of the parties, I have corrected the rental unit address to “street” versus “road” and have also corrected the landlord’s surname which the tenant has spelled incorrectly. This amendment was made in accordance with section 64(3) of the *Act*.

Issues to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?

- Is the tenant entitled the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties confirmed that the tenancy began in early 2016. The parties confirmed that the landlords purchased the home from the previous landlord in August 2016. The parties agreed that current monthly rent is \$620.00 per month and is due on the first day of each month.

The tenant testified that he received the 10 Day Notice on April 2, 2018 and that it was dated April 2, 2018. The tenant disputed the 10 Day Notice on April 6, 2018 which is within the required 5 day timeline under the *Act*. According to the 10 Day Notice, \$620.00 was owed as of April 1, 2018. The effective vacancy date on the 10 Day Notice is listed as April 12, 2018.

The tenant confirmed that he has not paid rent for April or May of 2018. The tenant stated the reason that he did not pay April 2018 rent was that he did not have the money to do so.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice to End Tenancy for Unpaid Rent – The tenant confirmed under oath that he has not paid April or May 2018 rent. The effective vacancy date on the 10 Day Notice is listed as April 12, 2018. The tenant continues to occupy the rental unit.

Section 26 of the *Act* requires that the tenant pay rent on the day that it is due in accordance with the tenancy agreement whether or not the landlord complies with the *Act*. Therefore, based on the above, **I find** the 10 Day Notice issued by the landlords to be **valid and is upheld** as the tenant failed to pay rent when it was due.

Section 55 of the *Act* applies and states:

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.

[My emphasis added]

I dismiss the tenant's application to cancel the 10 Day Notice as the tenant has confirmed that rent was not paid when it was due as required by section 26 of the *Act*. I have reviewed the 10 Day Notice and find that it complies with section 52 of the *Act* and as a result, **I grant** the landlords an order of possession effective two (2) days after it is served on the tenant. I find the tenancy ended on April 12, 2018 which was the effective date of the 10 Day Notice and find the tenant has been overholding since April 12, 2018.

I do not grant the tenant the recovery of the cost of the filing fee as the tenant's application is dismissed without leave to reapply due to insufficient evidence.

Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed without leave to reapply.

The landlords have been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

I find the tenancy ended April 12, 2018.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 2, 2018

Residential Tenancy Branch