



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	<u>For the Tenant:</u>	CNR
	<u>For the Landlord:</u>	OPR

Introduction

This hearing dealt with cross applications for dispute resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s application for dispute resolution was made on May 18, 2018 (the “Tenant’s Application”). The Tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”).

The Landlord’s application for dispute resolution was made on June 5, 2018 (the Landlords’ Application”). The Landlord applied for an order of possession of the rental unit.

The Tenant, the Landlord, and the Landlord’s agent (the “Agent”) attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Agent advised me that the Tenant did not serve the Notice of Dispute Resolution Proceeding package on the Landlord until July 3, 2018. However, the Landlord did not raise any issues regarding whether they had insufficient time to review the Tenant’s evidence.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice?
2. If the Tenant is not entitled to an order cancelling the 10 Day Notice, is the Landlord entitled to an order of possession of the rental unit?

Background and Evidence

The Tenant has resided in the rental unit since 2016. While the parties did not submit into evidence a copy of a tenancy agreement, the Tenant testified that monthly rent is \$1,400.00. The Landlord testified that the Tenant has not paid rent for May, June, July, September, October 2017, and for June and July 2018, and that the Tenant currently owes \$7,000.00 for last year, and \$2,800 for this year. The Landlord submitted a copy of a ledger that purportedly showed rent owed, and rent paid, though I must admit that the ledger was difficult to understand, as some of the columns were covered up.

The Landlord issued the 10 Day Notice on May 15, 2018, and served it on the Tenant by posting it on the Tenant's door. The Tenant acknowledged that the Landlord served him in this manner.

The Tenant submitted that this case is not about rent, but rather, it is about the Landlord "kicking him out." He submits that the Landlord wants him out so that he can re-rent and raise the rent. He testified that the Landlord locked him out in 2016, and submitted a police occurrence report for an incident that occurred on June 30, 2015. The report does not provide a summary of what occurred, and is of a different date than when the Tenant submitted the lock-out occurred.

The Tenant further testified that "yes, I owe him but he won't take the money." He testified that he usually pays by cash or cheque. He testified that he currently owes the Landlord \$8,400.00 in unpaid rent, and that he can give it to the Landlord at any time but the Landlord refuses.

The Agent submitted that the Tenant's testimony about him approaching the Landlord to pay rent is "an outrageous lie." Further, the reason that the Tenant has ever paid cash is because some of his rent cheques have bounced. The Agent further submitted that the Tenant, in his application, said that he would pay rent on June 15, 2018, but failed to do so, and that this demonstrates the Tenant's unwillingness to pay rent.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. Pursuant to section 46 of the Act, the Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains that the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlord testified that the Tenant has not paid rent for several months in 2017 and two months in 2018, and owes upwards of \$9,800.00. The Tenant does not dispute that he owes rent, but that the amount is \$8,400.00. He testified that the Landlord refuses to take his money. That the Landlord has accepted rent on many occasions in the past raises a doubt in my mind as to the Tenant's position on this matter. The Tenant did not provide any evidence of making attempts to pay rent. For example, a copy of a cheque and a registered mail receipt, which could have been sent to the Landlord's address of service. I am not convinced that, as the Tenant submits, he has \$8,400.00 available and ready to be paid, but that the Landlord refuses to accept it on the basis that the Landlord wants to evict him in order to re-rent at a higher rent. The Tenant did not provide any evidence in support of this argument and the Landlord vehemently disputes that position.

The Tenant has failed to demonstrate that he had a right under the Act to withhold any or all of the rent for the months in 2017 and 2018.

Taking into consideration all the oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving the grounds on which the 10 Day Notice was issued.

Conclusion

As such, I dismiss the Tenant's application for an order cancelling the 10 Day Notice, without leave to reapply.

I grant the Landlord an order of possession of the rental unit for unpaid rent. This order must be served on the Tenant and is effective two (2) days after service on the Tenant. This order may be filed in 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 subsection 9.1 (1) of the Act.

Dated: July 17, 2018

Residential Tenancy Branch