



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OPR, OLC, LRE

Introduction

This hearing dealt with applications by the tenant pursuant to the *Residential Tenancy Act* for an order to set aside notices to end tenancy for landlord's use of property and for unpaid rent. The tenant also applied for orders directing the landlord to comply with the *Act* and to place restrictions on the landlord's right to enter the rental unit.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was represented by two of his daughters and the tenant represented himself.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

The tenant received the notice to end tenancy for landlord's use of property on May 26, 2018 and on June 04, 2018 the tenant received a second notice to end tenancy for non-payment of rent. The tenant disputed both notices and two separate hearings were scheduled to address the two notices.

Since the notices are served on the same tenant by the same landlord for the same rental unit, in the interest of the convenience of all concerned, I dealt with both the notices to end tenancy during this hearing on July 19, 2018. The parties have been informed that they are no longer required to attend a hearing on July 27, 2018.

Issues to be decided

Does the landlord have reason to end the tenancy or should the notices to end tenancy be set aside and the tenancy be allowed to continue?

Background and Evidence

The tenancy started on in February 2018. The monthly rent is \$800.00 due in advance on the first day of the month. On May 26, 2018, the landlord served the tenant with a notice to end tenancy for landlord's use of property. The reason for the notice was that the landlord's daughter intended to move into the rental unit. The tenant disputed the notice in a timely manner.

The tenant failed to pay rent for June and on June 04, 2018; the landlord served the tenant with a notice to end tenancy for nonpayment of rent. The tenant disputed the notice in a timely manner, but failed to pay rent and continues to occupy the rental unit without paying rent. The tenant agreed that as of the date of the hearing, he owed the landlord \$1,600.00 in unpaid rent for the months of June and July 2018. The tenant testified that he was unemployed and therefore could not afford to pay rent.

The landlord requested an order of possession for August 01, 2018.

Analysis

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy for unpaid rent, on June 04, 2018 and applied to dispute the notice within the legislated time frame of five days.

Even though the tenant made application to dispute the notice to end tenancy within five days, I have to uphold the notice because the tenant did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy, on the date set out in the notice and must vacate the rental unit by that date. Accordingly, the notice to end tenancy is upheld and therefore the tenant's application to cancel the notice is dismissed.

Since I have upheld the notice to end tenancy for non-payment of rent, I have not addressed the notice to end tenancy for landlord's use of property. Also, since the tenancy is ending the remainder of the tenant's application is moot and accordingly dismissed.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession effective August 01, 2018.

Section 55 of the *Residential Tenancy Act* addresses an order of possession for the landlord and states:

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.

In this case, I find that the landlord served the tenant with a notice to end tenancy that complies with section 52 (form and content of notice to end tenancy). Since the tenant did not pay rent within five days of receiving the notice and still owes rent at the time of this hearing, I have dismissed the tenant's application for dispute resolution and have upheld the notice to end tenancy.

Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective by **1:00 pm on August 01, 2018**. The remainder of the tenant's applications is dismissed. The parties are not required to attend the hearing on July 27, 2018.

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: July 19, 2018

Residential Tenancy Branch