



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROTHERS MUSHROOM FARM LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for unpaid rent.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on or about June 10, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

The parties were not sure when this tenancy started and there was no written tenancy agreement. The Tenancy is on a month to month basis. Rent is \$650.00 per month payable in advance of the 1st day of each month. The Tenant did not pay a security deposit.

The Landlord’s agent said the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated May 30, 2018. They served the Notice on May 30, 2018 by posting it on the door of the Tenant’s rental unit. The Effective Vacancy date on the Notice is June 9, 2018. The Tenant is living in the unit and the Landlord requested an Order of Possession as soon as possible if the Tenant’s application is unsuccessful.

The Landlord continued to say that the Tenant had \$5,100.00 of unpaid rent on May 30, 2018 and the Tenant has not paid the June or July 2018 rent in the amount of \$650.00 for each month.

The Tenant said he paid approximately \$8,000.00 of rent up to March 2018 and since that time he has had health issues that caused him to stop working so he has not paid the rent since March 2018. The Tenant said he doesn't know how much rent is unpaid but it is at less \$2,600.000. The Tenant continued to say he would like more time to move as he has to organize a truck and process his things. The Tenant said that the Landlord has damaged his belongings that are outside as the Landlord hired a bobcat loader to move stuff around. The Tenant said he may make an application for damages in the future.

The Landlord said they may also make an application for unpaid rent and compensation for damage to the rental unit.

Analysis

Section 26(1) says 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.

The Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due. The Tenant gave affirmed testimony that he was not sure how much rent was unpaid but he believes it was at least \$2,600.00. As the Tenant agrees there is unpaid rent; I find the Tenant has not established grounds to be granted an order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent. I dismiss the Tenant's application without leave to reapply. The Landlord's 10 Day Notice to End Tenancy dated May 30, 2018 stands in effect. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of the Order on the Tenant.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective 2 days after service of the Order on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

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 25, 2018

Residential Tenancy Branch