



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for unpaid rent and to restrict the Landlord's right of entry. .

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on December 16, 2018. The Landlord testified that he received the Tenant's hearing package. Based on the evidence of the Tenant and Landlord, I find that the Landlord was served with the Tenant's 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?
2. Is the Tenant entitled to and order to restrict the Landlord's right of entry?

Background and Evidence

This tenancy started on May 25, 2018 as a one year fixed term tenancy. Rent is \$2,500.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,250.00 on May 25, 2018.

The Landlord said he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated December 5, 2018. He served the Notice on December 6, 2018 by posting the notice on the door of the Tenant's unit. The Effective Vacancy date on the Notice was December 15, 2018. The Tenant is living in the unit and the Landlord requested an Order of Possession if the Tenant's application is unsuccessful.

The Landlord continued to say that the Tenants have unpaid rent of \$2,500.00 for both months of December 2018 and January 2019.

The Tenant said he does owe the rent and it was his mistake that the rent is not paid. The Tenant said he agrees to end the tenancy but he would like until the end of the

month so that he can find a new rental unit. The Tenant said he will paid the unpaid rent and professionally clean the rental unit before he moves out.

The Landlord said he wants to end the tenancy as soon as possible and he does not agree to ending the tenancy at the end of the month.

The Tenant said he understands that he has to move out after he receives the Order of Possession.

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 therefore; I find the Tenant has not established grounds to be granted an order to cancel the Notice to End Tenancy. The Landlord's 10 Day Notice to End Tenancy dated December 5, 2018 stands in effect and 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 two days after the order is service on the Tenant.

As the tenancy is ending the Tenant's application to restrict the Landlord's access to the unit is dismissed without leave to reapply.

Conclusion

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

An Order of Possession effective two days after service of it 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: January 07, 2019

Residential Tenancy Branch