



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail. The tenant confirmed that although he provided a copy of the 10 Day Notice dated July 9, 2019, he did not provide a copy as evidence to the landlord. The landlord confirmed that no documentary evidence was submitted for this dispute. Neither party raised any service issues. As both parties have attended and confirmed receipt of the notice of hearing package, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Section 46 says a landlord may end a tenancy by giving a notice to end tenancy for unpaid rent. In the case before me neither party has supplied a copy of the 10 Day Notice to End Tenancy for Unpaid Rent. Extensive time was spent with both parties during the hearing explaining the crucial and vital nature of this document to both parties. The Notice is not a trivial piece of information. It is the foundation that a landlord relies on to assist in an application to end tenancy when there is cause. Fortunately after lengthy discussions, both parties agreed to the contents of the 10 Day Notice dated July 9, 2019. In this case, the hearing resumed.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed the landlord served the tenant with the 10 Day Notice dated July 9, 2019 by posting it to the rental unit door. Both parties confirmed that the 10 Day Notice states that the tenant failed to pay rent of \$1,675.00 that was due on July 1, 2019 and provides for an effective end of tenancy date of July 23, 2019.

The tenant disputes the landlord's notice by providing both written and oral submissions which states, "Refusal to provide heat as per lease for 17 months." The tenant clarified that he was withholding rent because the landlord has failed to provide heat as part of the tenancy agreement.

The tenant clarified that he did not have permission from the landlord to withhold the monthly rent, nor did the tenant file an application for authorization for the tenant to withhold the rent.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, both parties confirmed the landlord served the tenant with the 10 Day Notice dated July 9, 2019. Both parties confirmed the contents of the 10 Day Notice which states that the tenant failed to pay rent of \$1,675.00 that was due on July 1, 2019.

The tenant has disputed the 10 Day Notice providing written submissions on the application for dispute as "Refusal to provide heat as per lease for 17 months."

Section 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case, both parties confirmed that the tenant failed to pay rent of \$1,675.00 that was due on July 1, 2019. The tenant provided undisputed testimony that he did not have permission from neither the landlord nor the Residential Tenancy Branch to withhold the monthly rent. As such, tenant's application to cancel the 10 Day Notice is dismissed as it is upheld.

Pursuant to section 55 (1) of the Act the landlord is granted an order of possession. As the effective end of tenancy date has now passed, I order that the tenant comply with the order of possession 2 days after upon being served.

The order of possession must be served upon the tenant. 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 tenant's application is dismissed without leave to reapply.
The landlord is granted an order of possession.

This order must be served upon the tenant. 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.

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: August 12, 2019

Residential Tenancy Branch