



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNR

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated July 22, 2010 and effective July 31, 2010. The tenant's application also requested reimbursement by the landlord for the cost of the filing.

Both the landlord and the tenant appeared and each gave testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the Ten-Day Notice to End Tenancy for Unpaid was warranted. The questions to be answered include:
 - Did the tenant violate the Act by failing to pay rent when rent was due?
 - Did the tenant have a valid reason under the Act not to pay the rental amount in full?
 - Did the tenant pay the rent in full within 5 days of receiving the Notice to End Tenancy?

The burden of proof is on the landlord/respondent to justify the reason for the Ten-Day Notice.

Background and Evidence

Submitted into evidence by the applicant/tenant in support the application was, a copy of the Ten-Day Notice to End Tenancy dated July 22, 2010, photographs of the unit, a copy of the tenancy agreement. copies of communications between the parties . Also

placed in evidence by the landlord were copies of additional Notices to End Tenancy including a Ten Day Notice to End Tenancy for Unpaid Rent issued on September 4, 2010 and October 13, 2009 and a copy of a One Month Notice to End Tenancy for Cause issued on July 22, 2010 as well as copies of emails to and from the tenant..

The tenancy began on June 1, 2008 and the rent is currently \$1,960.00. A deposit of \$950 was paid. The tenant acknowledged that rent was not paid in full, but testified that this was due to a serious flooding issue that made the lower portion of the rental unit unlivable and as a result, the tenant had lost a paying co-tenant, thereby making payment of rent more difficult. The tenant testified that approximately one-half of the unit was not available to the tenant and the tenant had not been willing to pay full rent for this portion of the rental unit.

The landlord acknowledged that the flooding incident occurred and that this was due to equipment malfunction that was not properly handled by the tenant in a timely manner.

Analysis – Notice to End Tenancy

Section 26 of the Act states that rent must be paid when it is due whether or not the landlord complies with the 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.

Given the testimony of the parties, I find that the tenant did not pay the rent when rent was due, and did not pay arrears within 5 days of receiving the Notice to End Tenancy for Unpaid Rent. While the tenant felt that there was a valid reason under the Act to withhold rent, section 26 makes it clear that payment is due even if a landlord has violated the tenancy agreement or the Act.

Prior to taking the step of withholding the rent, the tenant should have made an application for dispute resolution seeking repairs and a rent abatement based on the devalued tenancy. The fact that this was not possible for the tenant, given the reduction in income due to the flooding was unfortunate.

However, the tenant's entitlement to a rent abatement or monetary compensation was not a matter before me at this time as the tenant's application pertained only to the request to cancel the Notice.

A mediated discussion ensued and the parties agreed that an Order of Possession would be issued to the landlord effective October 31, 2010 and the parties would attempt to come to an agreement as to how much rent abatement was warranted and the amount of the arrears still outstanding. If this financial matter is not resolved, either of the parties is at liberty to make an application seeking monetary compensation under the Act.

Accordingly, I find the tenant's application requesting an order to cancel the Ten-Day Notice must be dismissed.

Conclusion

Based on the evidence, I hereby issue an Order of Possession in favour of the landlord effective October 31, 2010 at 1:00 p.m. which must be served on 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.

The tenant's application is hereby dismissed without leave.

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: September 2010.

Dispute Resolution Officer