Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to dispute an additional rent increase and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence and testimony provided.

The tenant rents a unit from the BC Housing Management Commission.

The tenant submits that his rent increase given was not properly calculated.

Residential Tenancy Regulation, section 2, provides exemptions to specific landlords, from the sections of the Act that determine rent increases. As the landlord is exempt from the provision of the Act in relation to rent increases, the tenant's application in relation to the rent increase is not within the jurisdiction of the Act.

The tenant confirmed that on December 8, 2011, he received a 10 Day Notice Ending Tenancy for Unpaid rent. The parties confirmed that on November 1, 2011, the tenant was given a letter indicating that in the absence of the required income declaration submissions, the subsidized rent would alter to deemed rent in the sum of $1,500.00 effective December 1, 2011.

The tenant made one payment for December rent and owes a balance in the sum of $1,394.00. The tenant confirmed he has not paid this amount owing.

The Notice indicated that the Notice would be automatically cancelled if the landlord received $1,394.00 within five days after the tenant is assumed to have received the Notice. The Notice also indicated that the tenant is presumed to have accepted that the tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The landlord requested an Order of possession.

Analysis

The tenant confirmed he has not paid the deemed rent owed within 5 days of December 8, 2011.

The tenant has not fully complied with the landlord's request for income declaration.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. Therefore, in the absence of evidence that the tenant has paid the deemed rent owed, I find that the tenant's application is dismissed.

 Section 55(1) of the Act provides:

> **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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
>
>> (a) the landlord makes an oral request for an order of possession, and
>> (b) the director dismisses the tenant's application or upholds the landlord's notice.

On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenant.

Conclusion

As I have determined that the tenant has failed to pay rent I find that the 10 Day Notice to End Tenancy for Unpaid Rent issued on December 8, 2011, is of full force and effect.

The tenant's Application for dispute Resolution is dismissed without leave and, based upon the oral request of the landlord I have issued an Order of possession to the landlord, pursuant to section 55(1) of the Act.

The portion of the application disputing a rent increase does not fall within the jurisdiction of the Act.

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 03, 2012.

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Residential Tenancy Branch