



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, FF / OPR

Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a 10 day notice to end tenancy for unpaid rent / and recovery of the filing fee. Despite his filing of the application, the tenant did not appear. However, the landlord's agent attended the hearing and gave affirmed testimony. During the hearing the landlord's agent requested an order of possession in the event that the tenant's application does not succeed.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement in evidence for this tenancy which began in June 2009. Monthly rent of \$375.00 is due and payable in advance on the first day of each month.

Arising from rent which remained unpaid for August (\$375.00) and September (\$375.00) on September 1, 2012, the landlord issued a 10 day notice to end tenancy for unpaid rent dated September 18, 2012. The notice was served by way of posting on the tenant's door on that same date. Thereafter, the tenant filed an application to dispute the notice on September 24, 2012, however, he has made no further payment toward rent and he continues to reside in the unit.

Analysis

Section 26 of the Act speaks to **Rules about payment and non-payment of rent**, and provides in part:

26(1) 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.

Section 55 of the Act addresses **Order of possession for the landlord**, in part:

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.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated September 18, 2012. While the tenant filed an application to dispute the notice, he did not pay the outstanding rent within 5 days of receiving the notice. In the absence of any evidence that the tenant has a right to deduct all or a portion of the rent, and in view of the landlord's oral request for an order of possession during the hearing, the tenant's application is hereby dismissed and I find that the landlord has established entitlement to an order of possession.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order 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.

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: October 29, 2012.

Residential Tenancy Branch