



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 an Application for Dispute Resolution by the tenant to cancel a Ten-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. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy for Unpaid Rent be cancelled?

The burden of proof is on the landlord to justify the 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 December 8, 2012. Other evidence was submitted to the Residential Tenancy Branch and served on the other party, including copies of communications and copies of receipts. No copy of the tenancy agreement was in evidence.

The month-to-month tenancy began on October 22, 2012 with rent of \$925.00 and a security deposit of \$462.50 was paid.

The landlord testified that the tenant fell into arrears in the rent and on December 1, 2012 owed \$991.38. The landlord testified that the tenant made 3 partial payments totaling \$920.00, but failed to pay the remaining \$71.38 owed.

The landlord testified that the tenant has not paid any rent since December 17, 2012, when he made the last partial payment towards the arrears owed. The landlord's

position is that the 10-Day Notice to End Tenancy for Unpaid Rent is justified and should not be cancelled. The landlord requested an Order of Possession based on the Notice.

The tenant acknowledged receiving the Ten Day Notice to End Tenancy for Unpaid Rent. The tenant stated that he made payments within 5 days to cancel the Notice, but the tenant also acknowledged that it was not paid in full. The tenant was not able to furnish any proof that he had paid more than \$920.00 and he was aware that he still owed some remaining rent for December 2012.

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, regulations or tenancy agreement, unless the tenant otherwise has a right under this Act to deduct all or a portion of the rent.

Given the testimony of the parties and the evidence before me, I find that the tenant did not pay the rent when rent was due in December 2012. When a tenant fails to pay the rent on, or before the day it is due, section 46 of the Act permits a landlord to issue and serve a 10-Day Notice to End Tenancy for Unpaid Rent. Under the Act, a tenant can cancel the Notice by paying all of the arrears in full within 5 days of being served with the Notice.

I find that, under the Act, the tenant did not have a right to withhold any rent and the evidence shows that this tenant failed to pay all of the arrears within 5 days of receiving the Notice to End Tenancy for Unpaid Rent.

Accordingly, I find that the 10-Day Notice to End Tenancy for Unpaid Rent was valid and I must dismiss the tenant's application requesting an order to cancel the Notice.

During the hearing the landlord made a request for an order of possession. Under the provisions of section 55(1) of the Act, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy.

Based on the testimony and evidence discussed above, I hereby issue an Order of Possession in favour of the landlord, effective two days after service to the tenant.

The tenant must be served with the order of possession. 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 and the landlord is granted an order of possession.

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: February 12, 2013

Residential Tenancy Branch