



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, OPC, MNR, O, FF
 Tenant: CNR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord and his agent.

The landlord submitted documentary evidence to confirm the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally on May 5, 2014 in accordance with Section 89 and that this service was witnessed by a third party.

Based on this evidence of the landlord and the fact the tenant had also submitted his own Application for Dispute Resolution, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 67, and 72 of the *Act*.

It must also be decided if the landlord is entitled to an order of possession for unpaid rent and/or for cause; to a monetary order for unpaid rent and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on October 8, 2013 for a 1 year fixed term tenancy beginning on October 20, 2013 for a monthly rent of \$1,600.00 due on the 5th of each month with a security deposit of \$800.00 paid;
- A copy of a 1 Month Notice to End Tenancy for Cause issued to the tenant on March 14, 2014 with an effective vacancy date of April 17, 2014 citing the tenant or a person permitted on the property by the tenant ha significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued to the tenant on March 14, 2014 with an effective vacancy date of March 27, 2014 due to \$1,640.00 in unpaid rent and \$10.00 in utilities owed.

The landlord submitted video and documentary evidence confirming both notices to end tenancy were served to the tenant on March 14, 2014 and that the service was witnessed by a third party.

The 10 Day Notice indicated the tenant had 5 days to pay the rent in full or file an Application for Dispute Resolution to dispute the notice. The landlord testified that the tenant has not paid rent for March, April or May 2014. The tenant submitted his Application for Dispute Resolution to cancel the 10 Day Notice on March 24, 2014.

The 1 Month Notice indicated the tenant had 10 days to file an Application for Dispute Resolution if he sought to cancel the 1 Month Notice. The tenant did not include on his Application submitted on March 24, 2014 that he was also seeking to cancel a 1 Month Notice.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

As per the landlord's submission I find the tenant was served with the 10 Day Notice to End Tenancy on March 14, 2014 by posting it to the rental unit door. Pursuant to Section 90 of the *Act*, I find the tenant is deemed to have received the notice on March 17, 2014. As such, I find the tenant had until March 22, 2014 to submit his Application for Dispute Resolution. As March 22, 2014 was on a weekend the tenant is allowed

until the following business day to submit his Application for Dispute Resolution, and he did.

However, as the tenant has failed to attend this hearing I to present his case, I dismiss his Application in his entirety. Section 55(1) of the *Act* states if a tenant makes an Application for Dispute Resolution to dispute a landlord's notice to end tenancy, the director must grant an order of possession to the landlord if, the landlord makes an oral request for an order of possession and the director dismisses the tenant's Application or upholds the landlord's notice.

As the landlord had submitted an Application for Dispute Resolution seeking an order of possession I am satisfied the landlord sought an order of possession through this hearing. Therefore, I find the landlord is entitled to an order of possession, pursuant to Section 55(1).

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Section 47(4) of the *Act* allows a tenant to dispute a notice to end tenancy under Section 47 within 10 days after the date the tenant receives the notice. Section 47(5) states that if a tenant does not submit an Application for Dispute Resolution seeking to dispute the notice within 10 days the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the notice and must vacate the rental unit by that date.

As the tenant has failed to submit an Application for Dispute Resolution to dispute this Notice I find the tenant is conclusively presumed to have accept the end of the tenancy.

In addition, and based on the landlord's undisputed testimony I find the tenant has failed to pay rent for the months of March, April and May 2014.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$4,850.00** comprised of \$4,800.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: May 13, 2014

Residential Tenancy Branch

