



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPR
 Tenants: MT, DRI, CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession. The tenant sought more time to cancel a notice to end tenancy; to cancel a notice to end tenancy; and to dispute an additional rent increase.

The hearing was conducted via teleconference and was attended by the landlords' agent, one of the landlords and the tenant.

At the outset of the hearing the tenant confirmed he received a 10 Day Notice to End Tenancy for Unpaid Rent from the landlord by registered mail on June 16, 2015. He applied to the Residential Tenancy Branch to dispute the Notice on June 17, 2015.

While the landlord had confirmation that the Notice was sent to the tenant by registered mail on June 8, 2015 or June 9, 2015 (the landlord acknowledged Canada Post discrepancies) the landlord did not provide any tracking information from Canada Post that would provide confirmation of the date received by the tenant.

As a result, I find the tenant received the Notice on June 16, 2015 and the tenant filed his Application for Dispute Resolution to dispute the Notice within the 5 days required. Therefore, I find the tenant does not need to seek additional time to file his Application and I amend his Application to exclude this matter.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent, pursuant to Sections 46 and 55 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel an additional rent increase and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Sections 42, 43, and 46 of the *Act*.

Background and Evidence

The parties agreed the tenancy began as a month to month tenancy in March 2014 and that a security deposit of \$140.00 was paid. The parties cannot agree on the amount of rent or when in the month rent was due. No written tenancy agreement was prepared at the start of the tenancy.

The landlord submits that rent was \$700.00 from the start of the tenancy and that it was due on the 1st of each month. The landlord submits that even though the tenancy technically began on March 1, 2014 the tenant took possession March 15, 2014 and that he paid only ½ month's rent for March 2014. The male landlord testified that he was the person who entered into the verbal tenancy agreement with the tenant.

The tenant submits that rent began at \$650.00 in March 2014 and that it was agreed that he would pay the rent in accordance with his paydays. He stated that it was agreed that he would pay rent on the 8th and 23rd of each month. The tenant states that he had not met the male landlord until several months after the start of the tenancy and that he entered into the verbal tenancy agreement with the landlord's niece.

The tenant provided receipts for the period beginning in September 2014 to January 2015. The tenant submits that these receipts provide confirmation that he had agreement from the landlord to pay rent on the 8th and 23rd of each month. I note however that none of these receipts are dated on the 8th or 23rd of any of the months provided. I also note the tenant has not provided any receipts for the period of March to June 2014.

The tenant submits that the landlord approached him in June 2014 and told him that the rent would be increased to \$700.00 and if he could not afford he could move out of the rental unit. The tenant seeks to have this rent increase cancelled.

Both parties submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on June 8, 2015 with an effective vacancy date of June 22, 2015 due to \$1,450.00 in unpaid rent. The landlord submits the tenant has also not paid rent for July 2015.

The tenant acknowledges that he had not paid rent for May and June 2015, in part because he had been out of work. He stated that he had offered to pay the landlord a couple of hundred dollars in early June 2015.

Analysis

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

In the case before me the burden is on the tenant. When one party disputes the other party's claim it is not sufficient to simply provide testimony the party making the claim must provide additional evidence to corroborate their position. Such as the provision of copies of rent receipts showing a different amount of rent being paid for the period of March to June 2014, if these receipts would confirm the tenant was paying less rent in that period.

As the tenant has provided no evidence to corroborate that his rent agreed upon prior to the start of the tenancy was \$650.00 or that his rent was increased to \$700.00 in June of 2014, I find the tenant has failed to sufficiently prove his claim. Therefore, I dismiss this portion of the tenant's Application for Dispute Resolution.

Section 26 of the *Act* states that 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 the right under this *Act* to deduct all or a portion of the rent.

Based on the tenant's testimony, I find the tenant had no authority under the *Act* to withhold any amount of rent, including what he had determined was a rent increase contrary to the *Act* or any amount of rent because of his own financial circumstances.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice.

As such, and as I found above that the tenant received the 10 Day Notice on June 16, 2015 I find the tenant was required to either pay the rent in full or file his Application for Dispute Resolution no later than June 21, 2015.

I accept that the tenant submitted his Application on June 17, 2015 and as such met the deadline to submit his Application. However, I find the tenant has presented no reason allowed under that *Act* that would exempt him from his obligation to pay the landlord the full rent when it was due or within the 5 days after receiving the Notice.

As such, I find the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on June 8, 2015 is valid and enforceable. I dismiss this portion of the tenant's Application for Dispute Resolution.

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.

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: July 20, 2015

Residential Tenancy Branch

