



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNR CNQ DRI MNDC OLC ERP RP PSF LRE O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46;
- various other remedies under the Act

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide testimony and present evidence.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the landlord's 10 Day Notice to End Tenancy be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy for this lake house property began on November 1, 2014. The landlord submits the current monthly rent is \$1495.00 per month as reflected on the 10 Day

Notice. For an unknown reason, the tenant argued that the rent was actually \$1600.00 per month. The tenants paid a security deposit of \$747.50 and a pet deposit of \$747.50 at the start of the tenancy.

The tenant acknowledged receipt of the 10 Day Notice to End Tenancy for unpaid rent on February 4, 2017.

The landlord testified that the tenants did not pay the full amount of the arrears indicated on the Notice within five days of being served and that the full amount is still outstanding. The tenant acknowledged the outstanding rent was not paid within 5 days after receiving the notice and that it still remains outstanding.

The tenant's application to cancel the 10 Day Notice was filed on February 9, 2017 within the time period permitted under the Act.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

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

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application must be dismissed as the tenant acknowledged rent was not paid within 5 days after receiving the notice nor did the tenant have a right under this Act to deduct all or a portion of the rent.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the Act.

I find that the Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: March 09, 2017

Residential Tenancy Branch