



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNRT, FFT

Introduction

The tenant submitted an Application for Dispute Resolution (“application”) under the *Residential Tenancy Act* (“Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 2, 2018 (“10 Day Notice”) and to recover the cost of the filing fee.

The tenant and an agent for the landlord (“agent”) attended the teleconference hearing. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the rules of procedure, and testimony provided; however, I have only referred to the relevant evidence below.

The only documentary service issue raised was by the agent who initially stated that he was not served with rent receipts submitted in evidence by the tenant and after a short discussion the agent had no objections to having the rent receipts reviewed in evidence as they were signed by the landlord.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Is the tenant entitled the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties confirmed that the tenancy began in November 2016. The tenant denied that a signed tenancy agreement was ever signed by the parties and that the signed tenancy agreement submitted in evidence was forged according to the tenant. The agent stated that the parties signed a fixed-term tenancy agreement and that nothing was modified and that the tenant was not being truthful and was making some serious allegations against the landlord as a result.

The tenant originally stated that he paid \$3,000.00 at the start of the tenancy towards ½ of the mortgage plus expenses and that the landlord, his brother, and he had entered into a verbal agreement to purchase the property together. The agent testified that the while a verbal discussion occurred between the landlord and tenant, the tenant could not afford to be a co-owner of the property and as a result, agreed to be a tenant only which is supported by the rent receipts submitted by the tenant which indicate that the tenant paid \$1,500.00 rent for the first month and \$1,500.00 a security deposit at the start of the tenancy. The tenant later changed his testimony that confirmed he paid a security deposit and first month's rent and then stated that he only agreed to do so as it helped his brother to obtain financing for the purchase of the property.

The tenant confirmed that there was no written Contract for Purchase and Sale of the residential property. The agent referred to a Statutory Declaration ("Declaration") submitted and signed by the landlord which indicates that a residential tenancy agreement was signed, that due to the tenant's financial challenges and given that the landlord's son had moved into the rental home and was paying the landlord \$500.00 that the landlord was willing to accept \$1,000.00 per month in rent as of August 24, 2018 as an "expense-based rental scheme" as written by the landlord in his Declaration and that the matter of the rent became increasingly tense between the tenant and the landlord.

The tenant also confirmed that there was no written agreement between the parties in a work for rent arrangement. Furthermore, the tenant did not present any documentary

evidence for my consideration to support that his signature was forged by another person by way of providing a signature sample in evidence for my consideration.

The tenant did confirm that he did not pay any money for rent for the months of September, October and November 2018. The 10 Day Notice was submitted in evidence and the tenant confirmed that he received the 10 Day Notice dated September 18, 2018 on September 18, 2018. The amount indicated as owed on the 10 Day Notice is listed as \$1,500.00 due on September 1, 2018. The tenant confirmed that no money was paid to the landlord since being served with the 10 Day Notice. The tenant disputed the 10 Day Notice on September 21, 2018. The effective vacancy date listed on the 10 Day Notice was September 28, 2018 which has passed.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice to End Tenancy for Unpaid Rent – The tenant confirmed under oath that he has not paid money to the landlord for September, October or November 2018. I find the tenant has provided insufficient evidence to support that the tenancy agreement submitted by the tenant in evidence was forged or fraudulent as the tenant failed to provide a signature example to support that he did not sign the tenancy agreement. Further, I find that the rent receipts submitted by the tenant support that the tenant was a tenant paying rent and not paying towards the landlord's mortgage as he alleged during the hearing. I afford the rent receipts submitted by the tenant significant weight as a result, and I find a signed tenancy agreement was formed between the parties.

Even though the landlord writes in his Declaration that he was accepting \$1,000.00 on August 24, 2018 as the landlord's son was paying \$500.00 in rent to the landlord, I find the 10 Day Notice to be valid as I find an amount was owing by the tenant and that the tenant has confirmed that he did not pay the landlord rent for the months of September, October and November 2018 during the hearing. The effective vacancy date on the 10 Day Notice was September 28, 2018 which has passed. The tenant continues to occupy the rental unit.

Section 26 of the *Act* requires that the tenant pay rent on the day that it is due in accordance with the tenancy agreement whether or not the landlord complies with the *Act*. Therefore, based on the above, I find the 10 Day Notice issued by the landlord to be **valid and is upheld** as the tenant has provided insufficient evidence that he failed to pay

rent when it was due. I do not find it necessary to determine the amount of rent owed as there was no landlord application before me for unpaid rent or utilities.

Section 55 of the *Act* applies and states:

Order of possession for the landlord

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 to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

[My emphasis added]

I dismiss the tenant's application to cancel the 10 Day Notice as the tenant has confirmed that rent was not paid and I find the parties entered into a tenancy agreement. I find the tenant has provided insufficient evidence to support that the tenancy agreement was fraudulent or forged. I have reviewed the 10 Day Notice and find that it complies with section 52 of the *Act* and as a result, I grant the landlord an order of possession effective two (2) days after it is served on the tenant. I find the tenancy ended on September 28, 2018 which was the effective date of the 10 Day Notice and find the tenant has been overholding since September 28, 2018.

I do not grant the tenant the recovery of the cost of the filing fee as the tenant's application is dismissed without leave to reapply due to insufficient evidence.

Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed without leave to reapply.

The tenancy ended on September 28, 2018.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

I do not grant the tenant the filing fee as the tenant's application has no merit.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 5, 2018

Residential Tenancy Branch