



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *CNR, CNC, OLC, FF*

Introduction

This hearing dealt with an application by the tenant for an order to set aside notices to end tenancy for nonpayment of rent and for cause. The tenant also applied for an order directing the landlord to comply with the *Act* and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves. The landlord was assisted by her agent.

As both parties were in attendance I confirmed service of documents. The tenant confirmed receipt of the landlord's application for dispute resolution and evidence. The tenant stated that he had uploaded evidence of his own into the system but had not served the landlord with copies of his evidence. Accordingly, the evidence of the tenant was not used in the making of this decision. I find that the tenant was served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy began in September 2016. The monthly rent is \$1,250.00 and does not include utilities. The landlord agreed to allow the tenant to pay \$600.00 every two weeks towards rent. A copy of the tenancy agreement along with the bi monthly rental payment calculation was filed into evidence

The tenant agreed that he failed to make a rental payment of \$600.00 that was due on September 28, 2018. On October 02, 2018, the landlord served the tenant with a 10 day notice to end tenancy for non-payment of rent in the amount of \$600.00.

The tenant disputed the notice in a timely manner. The tenant testified that since he received the notice to end tenancy, he has not paid rent and continues to occupy the rental unit without paying rent.

The tenant also testified that he was served with a one month notice to end tenancy for cause. The landlord requested an order of possession effective immediately. The landlord stated that if the tenant pays all rent owed (\$2,400.00) she would allow the tenancy to continue until November 30, 2018.

Analysis

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy for unpaid rent, on October 02, 2018 and applied to dispute the notice within the legislated time frame of five days. Even though the tenant made application to dispute the notice to end tenancy within five days, I have to uphold the notice because the tenant did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy, on the date set out in the notice and must vacate the rental unit by that date. Accordingly, the notice to end tenancy is upheld and therefore the tenant's application to cancel the notice is dismissed.

Since I have upheld the notice to end tenancy for non-payment of rent, I have not addressed the notice to end tenancy for cause. Also, since the tenancy is ending the remainder of the tenant's application is moot and accordingly dismissed.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession effective immediately. Section 55 of the *Residential Tenancy Act* addresses an order of possession for the landlord and states:

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.

In this case, I find that the landlord served the tenant with a notice to end tenancy that complies with section 52 (form and content of notice to end tenancy). Since the tenant did not pay rent within five days of receiving the notice and still owes rent at the time of this hearing, I have dismissed the tenant's application for dispute resolution and have upheld the notice to end tenancy.

Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. 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.

Since the tenancy is ending, the tenant's application for an order directing the landlord to comply with the *Act* is moot and accordingly dismissed. The tenant has failed to prove his case and must therefore bear the cost of filing this application.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective two days after service on the tenant. The remainder of the tenant's application is dismissed.

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: November 13, 2018

Residential Tenancy Branch