

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with the tenant's application to cancel a Notice to End Tenancy for Unpaid Rent and to recover the filing fee paid for this application. The landlord did not appear at the hearing. The tenant testified that she personally served the landlord with the hearing documents at the landlord's office in the presence of a witness within three days after the application was made. The witness, the tenant's sister, was available to testify as to service of the hearing package upon the landlord. I was satisfied the landlord was notified of this hearing and I proceeded to hear from the tenant without the landlord present.

Issues(s) to be Decided

1. Is there a basis to cancel the Notice to End Tenancy issued May 7, 2010?

Background and Evidence

The tenant testified as follows. The tenancy commenced approximately one and a half years ago. The tenant is required to pay rent of \$1,000.00 on the 1st day of every month. Management of the property has recently been turned over to a property manager. On May 7, 2010 the property manager issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) and posted it on the tenant's door. The Notice indicates rent of \$1,925.00 was not paid as of May 1, 2010. The tenant testified she paid the rent to the owner of the property by May 1, 2010 and does not owe any rent to the landlord. The tenant also claimed the owner kept poor records and she has met with the landlord in the past to deal with allegations the tenant owes rent.

The tenant testified that she was recently served with another 10 Day Notice for which the tenant has made another application for dispute. I did not consider testimony

related to the issuance of the 10 Day Notice in June as that matter will be determined by way of a subsequent hearing.

The tenant also attempted to raise issues related to a recent inspection by the City of North Vancouver. I did not consider such issues as they were not part of this application.

Analysis

Where a tenant receives a 10 Day Notice, the tenant has five days to pay the Notice or dispute the Notice. Since the Notice was posted on the tenant's door it is deemed to be served three days later in accordance with section 90 of the Act and I am satisfied the tenant disputed the Notice issued May 7, 2010 within the time limit imposed by the Act.

Where a Notice issued by the landlord comes into dispute it is upon the landlord to prove the basis for issuing the Notice. In this case, the landlord did not appear at the hearing or provide any documentary evidence in support of the Notice. Since the tenant has testified she paid rent for May 2010 and previous months I find there is a basis to cancel the Notice in the absence of any evidence to the contrary.

In light of the above, I grant the tenant's application to cancel the Notice issued May 7, 2010 with the effect that this tenancy shall continue until such time it legally ends.

Since the tenant was successful in this application I award the filing fee to the tenant. The tenant is hereby authorized to recover \$50.00 from the landlord. By way of this decision the tenant is hereby authorized to withhold \$50.00 from rent payable to the landlord.

Conclusion

The 10 Day Notice to End Tenancy issued May 7, 2010 has been cancelled with the effect that this tenancy shall continue until such time it legally ends. The filing fee has been awarded to the tenant.

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: June 15, 2010.

Dispute Resolution Officer