



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR
Tenant: CNR

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 6, 2011.

The Landlord's agents admitted that they received a copy of the Tenant's Application and Notice of Hearing on October 19, 2011. The Landlord's agents claimed that the Tenant was served in person with the Landlord's hearing package on October 20, 2011 which the Tenant denied. I find that it is of no consequence in this matter whether the Tenant was served with the Landlord's application or not as in this matter, the Landlord may also request an Order of Possession at the hearing pursuant to s. 55(1) of the Act if the Tenant's application is dismissed.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This month-to-month tenancy started on August 1, 2011. Rent is \$640.00 per month payable in advance on the 1st day of each month. The Landlord's agents said the Tenant did not pay rent for October 2011 when it was due and as a result, on October 6, 2011, the Tenant was served in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 6, 2011. The Landlord's agents said the rent arrears for October 2011 are still unpaid as is rent for November 2011.

The Tenant said due to an error, her rent payment was sent to her former landlord by the Ministry. The Tenant said she did not discover this until after she received the 10 Day Notice from the Landlord. The Tenant said she notified the Ministry about the error and they issued a new cheque to the Landlord but the Landlord would not cancel the 10 Day Notice. The Tenant initially said the new cheque was issued on October 6, 2011 but later admitted that it was issued the following week. The Landlord's agent said she had this discussion with the Ministry on October 13, 2011.

Analysis

Section 46(4) of the Act states that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Tenant was served in person on October 6, 2011 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Consequently, ***the Tenant had until October 11, 2011 at the latest*** to either pay the rent arrears or to make an application for dispute resolution to dispute the rent arrears. The Tenant filed her application for dispute resolution on October 14, 2011, ***3 days late*** and did not apply for leave (or for more time) to file her application late. Furthermore, although the Tenant argued that a payment of the rent arrears for October 2011 was offered to the Landlord, I find on a balance of probabilities that this payment was offered on October 13, 2011 as the Landlord claimed and therefore that payment would also have been made too late to cancel the 10 Day Notice to End Tenancy.

For all of these reasons I find that the Tenant's application must be dismissed without leave to reapply. Consequently, the Landlord requested and I find that the Landlord is entitled pursuant to s. 55(1) of the Act to an Order of Possession to take effect 2 days after service of it on the Tenant. The Landlord did not seek a Monetary Order for the unpaid rent.

Conclusion

The Tenant's application is dismissed. An Order of Possession to take effect 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in 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: November 08, 2011.

Residential Tenancy Branch