



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, MNR, FF
Tenant: CNR

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities as well as to recover the filing fee for this proceeding. The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 3, 2012.

At the beginning of the hearing, the Parties confirmed that the person identified on the Tenant's application was the former property manager of the rental property and that the new property manager is the Landlord identified in the Landlord's application for Dispute Resolution. The Parties agreed to amend the Tenant's application to make this amendment.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent and utility arrears and if so, how much?

Background and Evidence

This month-to-month tenancy started on May 1, 2012. Rent is \$850.00 per month payable in advance on the 1st day of each month plus utilities (or electricity). The Landlord claims that the former property manager served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 3, 2012 both in person and by posting it to the rental unit door on September 3, 2012. The Tenant said the Notice was posted to her door and a copy left in her mail box when on September 2, 2012 because that was when she received them.

The Tenant said on September 8, 2012, she offered to pay the former property manager \$200.00 of the rent in cash with the balance to be paid on September 12, 2012. The Tenant said the former property manager would not accept her cash payment and advised her that it would have to be made by way of a cheque or bank draft. The Tenant said she offered to give the former property manager a cheque for the full amount of the rent on September 12, 2012 but she would not accept it and said she

required certified funds. The Tenant admitted that she has not paid rent for September or October 2012 or electrical billings in the amount of \$127.51 (ie. \$46.87 + \$42.84 + \$37.80).

The Tenant said she waited until September 14, 2012 before filing an application for dispute resolution to cancel the Notice because she thought she would be able to resolve the matter with the former property manager.

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.

In the absence of any evidence as to when a Party received a document served on them, s. 90 of the Act says that a document that is posted or put in a mail box is deemed to be received three days later. However, this "presumption" is rebuttable with evidence to show that a party received it at an earlier date. I find that the Tenant received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 2, 2012. Consequently, the Tenant would have had to pay the amount of the rent in arrears stated on the Notice or (if she believed the amount was not owed) apply to dispute that amount ***no later September 7, 2012.***

The Tenant claimed that the former property manager refused to accept a partial payment of rent on September 8, 2012, however I find that this act was not sufficient to cancel the Notice because it was not a proposal to pay the rent in full and was after the 5 days granted under s. 46(4) of the Act.

Although the Tenant applied to dispute the 10 Day Notice on September 14, 2012, I find that there is no merit to her application because I find that there was unpaid rent of \$850.00 on September 2, 2012 when the Tenant received the Notice and that this amount was not paid within the 5 days granted under s. 46(4) of the Act. Furthermore, s. 66(3) of the Act says that the Director may not extend the time limit for a tenant to file an application for dispute resolution to dispute a notice to end tenancy beyond the effective date of the Notice. In this case, the Tenant filed her application on September 14, 2012, one day after the effective date of the 10 Day Notice (ie. September 13, 2012).

For all of these reasons, I find that the Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 3, 2012 must be

dismissed. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant.

I also find that the Landlord is entitled to recover rent arrears for September and October 2012 in the total amount of \$1,700.00, utilities in the amount of \$127.51 as well as the \$50.00 filing fee for this proceeding.

Conclusion

The Tenant's application is dismissed without leave to reapply. An Order of Possession to take effect at 1:00 p.m. on October 28, 2012 and a Monetary Order in the amount of **\$1,877.51** have been issued to the Landlord. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) 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: October 18, 2012.

Residential Tenancy Branch