



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNR, OPT, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated January 3, 2013.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy for Unpaid Rent be cancelled?

The burden of proof is on the landlord to justify the Notice.

Background and Evidence

Submitted into evidence by the applicant/tenant in support the application was, a copy of the Ten-Day Notice to End Tenancy dated January 3, 2013. Other evidence was submitted to the Residential Tenancy Branch and served on the other party, including copies of communications, copies of receipts and a copy of the tenancy agreement.

The month-to-month tenancy began on December 1, 2012 with rent of \$375.00 per month and a security deposit of \$187.50 was paid.

The landlord testified that the tenant had given him verbal notice that she was going to move at the end of December, but remained in the unit.

The landlord testified that the tenant fell into arrears in the rent by not paying \$375.00, properly due on January 1, 2013. The landlord testified that a Ten Day Notice to End Tenancy for Unpaid Rent was issued and served on the tenant. The landlord testified

that the rent was not paid within five days to cancel the notice and in fact was never paid at all.

The landlord stated that the tenant's security deposit of \$187.50 was returned to the tenant at her request.

The tenant acknowledged receiving the Ten Day Notice to End Tenancy for Unpaid Rent and the tenant acknowledged that the rental arrears were not paid. The tenant stated that she has already received a refund of the security deposit and she intends to move out.

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, regulations or tenancy agreement, unless the tenant otherwise has a right under this Act to deduct all or a portion of the rent.

Given the testimony of the parties, I find that the tenant did not pay the rent when rent was due nor did the tenant pay the arrears within 5 days of receiving the Notice to End Tenancy for Unpaid Rent.

I find that, under the Act, the tenant did not have a right to withhold the rent. Accordingly, I must dismiss the tenant's application requesting an order to cancel the Ten-Day Notice.

During the hearing the landlord made a request for an order of possession. Under the provisions of section 55(1) of the Act, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy.

Based on the testimony and evidence discussed above, I hereby issue an Order of Possession in favour of the landlord, effective two days after service to the tenant. The tenant must be served with the order of possession. 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.

Conclusion

The tenant's application is dismissed without leave to reapply and the landlord is granted an order of possession.

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: January 31, 2013

Residential Tenancy Branch

