



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 29, 2014, by the Tenants to obtain an Order to cancel a 10 Day Notice for unpaid rent.

The parties appeared at the teleconference hearing, acknowledged receipt of the hearing documents and evidence submitted by the Tenants and gave affirmed testimony. Tenant C.D-W., appeared and affirmed that she was representing both Tenants as her boyfriend; K.P. was out of the country. The Tenants were represented by Tenant K.P. who affirmed that he was at the hearing to represent both Tenants. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 10 Day Notice issued May 3, 2014 be upheld or cancelled?
2. If cancelled, did the Landlord appear and make an oral request for an Order of Possession?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on March 1, 2014. The Tenants are required to pay rent of \$650.00 on the first of each month and on or before March 1, 2014, the Tenants paid \$325.00 as the security deposit plus \$325.00 as the pet deposit.

The Landlord testified that on May 3, 2014, when May 2014 rent was not paid he personally served the Tenants with the 10 Day Notice. No rent has been paid for May or June 2014.

The Tenant testified that her boyfriend paid the May 2014 rent, in cash, before he left the country. She argued that the Landlord refused to provide receipts so she had no proof that rent was paid. She could not provide evidence of the exact date rent was allegedly paid. Upon

clarification of June rent the Tenant stated that her boyfriend returned to the country and paid June rent in cash; but she did not have evidence to support when the payment was made.

In closing, the Landlord re-argued that no rent has been paid for May or June so he is requesting a Monetary Order and an Order of Possession. I explained to the Landlord that he must file his own application for Dispute Resolution if he wished to obtain a Monetary Order.

Analysis

Based on the foregoing, the relevant written submissions, and on a balance of probabilities, I find as follows:

Upon review of the 10 Day Notice to End Tenancy, I find the Notice was completed and served upon the Tenants in a manner that complies with the Act.

Section 26 of the Act provides that a tenant must pay rent when it is due in accordance with the tenancy agreement.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Tenants have the burden to prove rent was paid for May and June 2014. The only evidence before me was disputed verbal testimony which I find to be insufficient to meet the Tenants' burden of proof. Accordingly I dismiss the Tenants' application and the 10 Day Notice is upheld.

Section 55 of the Act provides that an Order of Possession must be provided to a landlord if a tenant's request to dispute a Notice to End Tenancy is dismissed and the landlord makes an oral request for an Order of Possession during the scheduled hearing.

Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenants**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

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 23, 2014

