



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SQUAMISH BUDGET INN
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: CNR,

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking to cancel a Ten Day Notice to End Tenancy for Unpaid Rent and to establish that the tenant's rent payment was not late for the purpose of the tenant's record of payments.

The applicant and her advocate were present and participated in the hearing. The tenant reported some difficulty in getting connected to the conference call.

Despite being served with the Notice of Hearing documents in person on July 30, 2014, the respondent landlord did not appear and the hearing was therefore conducted in the respondent's absence.

Issue(s) to be Decided

Should the 10-Day Notice to End Tenancy for Unpaid Rent be cancelled?

Background and evidence

The tenancy began in November 2013 and the monthly rent is \$1,100.00. The tenant testified that, she suddenly received a 10-Day Notice to End Tenancy for Unpaid Rent dated July 28, 2014, alleging unpaid rent of \$350.00 and utilities owed of \$35.00. The tenant testified that the information on the Notice is completely false and misleading.

According to the tenant, the landlord, who recently purchased the rental complex, had wrongfully accused the tenant of not paying the security deposit. The tenant pointed out that the landlord had received the deposit when she moved in. In support of this, the tenant submitted a copy of the payment slip as the official record showing that the deposit was paid directly by the ministry to the landlord. The tenant also stated that utilities are included in her rent and should not be shown as a separate charge.

The tenant requests that the 10-Day Notice to End Tenancy be cancelled.

The tenant requested that the decision be sent care of her advocate as the landlord has apparently been withholding the tenant's mail.

The tenant pointed out that, in addition to the above, the landlord has subsequently issued another vexatious Notice to End Tenancy under a different section of the Act, which the tenant also intends to dispute through the Residential Tenancy Branch.

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, the regulations or the tenancy agreement.

When a tenant fails to comply with section 26, then section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it.

I find that the landlord bears the burden of proof to justify the 10-Day Notice to End Tenancy for Unpaid Rent and the landlord has not submitted any evidence to support their claim that the rent was not received on time.

I accept the tenant's evidence proving that the tenant has paid the rent and therefore, the 10-Day Notice to End Tenancy for Unpaid Rent has no merit and must be cancelled.

In this instance I find that the tenant was not in arrears for rent at the time the 10-Day Notice was issued and served on the tenant. I find that the Notice must be cancelled.

I hereby grant the tenant's request and order that the 10-Day Notice to End Tenancy for Unpaid Rent dated July 28, 2014 is permanently cancelled and of no force nor effect.

Conclusion

The tenant is successful in the application and the 10-Day Notice to End Tenancy for Unpaid Rent is not valid on its fact as it was issued and served while the tenant was not in arrears.

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: August 25, 2014

Residential Tenancy Branch

