



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on August 29, 2014 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5th day after it was mailed.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

The tenant submits that she had not received the landlord's hearing package however, I confirmed on Canada Post's website during the hearing that the landlord's tracking number shows the tenant was provided with a notice of the package being available for pick up at the post office as of September 2, 2014.

The tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent that was issued in July 2014 and the landlord has applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent issued in August 2014. As these are technically different notices, I find that for the purposes of this hearing that both party's intentions are clear in that the tenant wishes to maintain the tenancy and the landlord wishes to end the tenancy.

As such, I will consider both Notices to End Tenancy for both parties.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on December 5, 2013 for a month to month tenancy beginning on December 5, 2013 for the monthly rent of \$850.00 due on the 1st of each month and a security deposit of \$425.00 paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on July 3, 2014 with an effective vacancy date of July 9, 2014 due to \$850.00 in unpaid rent; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on August 2, 2014 with an effective vacancy date of August 18, 2014 due to \$850.00 in unpaid rent.

The landlord submits the tenant did not pay rent for the month of July until August 8, 2014; for August until September 8, 2014; and that there is still \$300.00 owing for September 2014. The tenant did not dispute any of these dates or payments.

The tenant submits that she has had difficulty paying rent for these months because her children were in care and she was not receiving her usual funding in addition to reduced hours at her work. She submits that her children are now back and she should be back on track soon.

Analysis

Section 26 stipulates that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

As the tenant has provided no reason under the Act that would allow her to withhold any rent, I find that both Notices to End Tenancy issued by the landlord are valid and effective.

Conclusion

I find the landlord is entitled to an order of possession effective **September 30, 2014 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$350.00** comprised of \$300.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct this amount from the security deposit held in the amount of **\$425.00** in satisfaction of this claim. I note the balance of the security deposit of **\$75.00** must be dispersed in accordance with the *Act* at the end of the tenancy.

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: September 12, 2014

Residential Tenancy Branch

