



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1963 INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;

The landlord made an oral application at the hearing for an Order of Possession, should the tenant's application be unsuccessful.

The landlord's agent testified that she personally served the tenant with the 10 Day Notice on November 4, 2014 by posting it on the tenant's door. The tenant confirmed receipt of the notice. Based on the evidence and pursuant to section 88 and 90 of the *Act*, the tenant was served with the 10 Day Notice on November 7, 2014.

The tenant's advocate testified that she personally served the landlord with the dispute resolution package by handing it to the landlord's agent on November 15, 2014. The landlord confirmed receipt of the notice of hearing and the dispute resolution package. Based on the evidence and pursuant to section 89 of the *Act*, the landlord was duly served with this package on November 15, 2014.

The landlord submitted 22 pages of documentary evidence on November 19, 2014. The landlord testified that those materials were served to the tenant by posting on her door that same day, November 19, 2014. The tenant confirmed receipt of the landlord's documents. Based on the evidence and pursuant to section 88 and 90 of the *Act*, the tenant was served November 22, 2014, 3 days after posting.

The tenant submitted 8 pages of documentary evidence on November 24, 2014. The tenant testified that those materials were personally served to a representative of the landlord on November 24, 2014. The tenant confirmed receipt of the landlord's documents. Based on the evidence and pursuant to section 88 of the *Act*, the tenant was served with copies of the landlord's evidence on November 24, 2014.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled?
If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This fixed term tenancy began on June 18, 2014 for 3 months. After October 1, 2014, the tenancy converted to a month by month tenancy. The rental amount of \$650.00 was payable on the first of each month for the duration of the fixed term. The landlord holds a security deposit of \$325.00 paid June 18, 2014. Before October 1, 2014, the tenant began training with the property management office looking after this rental property on site at the residential premises. On October 1, 2014, she became an employee of the landlord.

The tenant's documentary evidence included a receipt from the landlords for \$650.00 marked "November rent". It also included a posting from the residential property from the landlords providing the hours of availability of the tenant in her new employee role. The tenant testified that she took on employment with the property management company because she believed the agreement was that, in exchange for her work, her rent would be paid. She states that she misunderstood the agreement with the property management company and that her tenancy should not end.

The landlord's documentary evidence included a copy of the fixed term tenancy agreement, written submissions and invoices for the tenant's payments from the landlord in October 2014. The package also contains "IOU" notes from the tenant to the landlords for small loans. The landlord testified that the tenant's November rent payment was returned. The tenant did not dispute this testimony.

The landlord's principal claim is that the tenant did not pay her rent in October 2014. The landlord testified that they made attempts to advise the tenant of her outstanding rental amount, discuss the nature of her employment and clear up any confusion. The landlord testified that the October 2014 rent was ultimately not paid and remains unpaid. On that basis, they seek to end her tenancy.

Analysis

The tenant has provided reasons why she had not paid her rent. However, the *Act* is clear. Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent."

I find the landlord has met his obligations in providing a proper 10 Day Notice, in the proper form and within the timelines permitted under the *Act*. I find that the evidence supports the landlord's claim that the tenant failed to pay her rent and that her rent remains unpaid. This is not disputed by the tenant.

The application by the tenant to cancel the landlord's 10 Day Notice is unsuccessful. I find that the 10 Day Notice will remain in effect.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession,
and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

Based on the evidence provided and the provisions of the *Act* regarding unpaid rent, the landlord is entitled to an Order of Possession with respect to the rental unit.

Conclusion

The tenant's application to cancel the landlord's 10 Day Notice to End Tenancy is dismissed. At the hearing, the landlord requested an Order of Possession if the tenant's application for cancellation of the Notice to End Tenancy were unsuccessful.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme 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: December 10, 2014

Residential Tenancy Branch

