



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMMUNITY FOUNDATION
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 did not appear for a hearing set for 1100. The hearing remained open until 1123. The landlord did not file any evidence in respect of this application. The tenant DO (the tenant) attended the hearing with his advocate and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions on behalf of the tenants. The tenant DO confirmed that he had authority to act on behalf of both tenants.

The advocate testified that she personally served the landlord with the dispute resolution package on 10 November 2014. The advocate stated that she left the dispute resolution package with the receptionist at the landlord's place of business. On the basis of this evidence, I am satisfied that the landlord was served with the dispute resolution package pursuant to section 89 of the Act.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the tenant, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

The tenancy began 1 August 2014. Monthly rent of \$900.00 is due on the first.

The tenants were served with the 10 Day Notice dated 4 November 2014. The 10 Day Notice set out that it was being given for outstanding rent of \$1,800.00 that was due on 1 November 2014.

The tenant's portion of the rent (\$450.00) is paid directly by the Province of British Columbia to the landlord. The tenant testified that the tenant MW pays her portion of the rent (\$450.00) by cash within a few days of receiving her cheque from the Province of British Columbia. The tenant testified that the tenant MW paid her rent for October and November to the building manager Y in cash. The tenant testified that the manager did not provide any receipts.

The tenant's advocate provided me with statements from the Province of British Columbia that show the tenant paid his portion of the rent well in advance of the first of the month for the months in issue. This evidence was filed late. I accept this evidence as it is unimpeachable evidence that the tenant paid his portion of the rent.

Analysis

In accordance with subsection 46(4) of the Act, the tenant must file his or her application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenants received the 10 Day Notice on 4 November 2014. The tenants filed their application for dispute resolution on 4 November 2014. Accordingly, the tenants filed within the five day limit provided for under the Act.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The landlord did not submit any evidence or appear for this hearing. The landlord did not meet its onus of proof. Further, on the basis of the tenant's undisputed and sworn testimony, I find that the tenants paid their rent as due for October and November. Thus, the 10 Day Notice is set aside and is of no force and effect. This tenancy will continue until ended in accordance with the Act.

Conclusion

The 10 Day Notice is set aside and is of no force or effect. The tenancy continues uninterrupted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: December 10, 2014

Residential Tenancy Branch

