



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR, FF

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; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed that she had received copies of the dispute resolution package and all of the tenant's evidence. On the basis of this evidence, I am satisfied that the landlord was served with the dispute resolution package and all evidence pursuant to sections 88 and 89 of the Act.

The landlord stated that she was not seeking an order of possession as she already had an order of possession in her favour for 28 February 2015. This order of possession was in respect of the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause (the prior application). That application was heard 12 February 2015.

Prior Applications

In the prior application, the previous arbitrator had before her documentary and oral evidence as to the contractual relationship between the parties. The previous arbitrator considered the evidence before her regarding the parties' contractual relationship and determined that the tenant's rent was due on the first of the month. On the basis that rent was due on the first of the month, the previous arbitrator found that the tenant was repeatedly late paying rent. The previous arbitrator upheld the 1 Month Notice to End Tenancy for Cause and issued the landlord an order of possession.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy commenced in July 2006. Monthly rent is currently \$925.00. The landlord testified that she continues to hold the tenant's security deposit of \$412.50, which was collected in June 2006.

The landlord issued a 10 Day Notice on 2 February 2015. That notice set out that it was given as the tenant had failed to pay rent of \$995.00 that was due on 1 February 2015. The 10 Day Notice set out that the tenant was to provide possession to the landlord on or before 12 February 2015. The landlord testified that she served the 10 Day Notice on the tenant personally.

The landlord testified that the tenant provided the landlord with two cheques on 1 February 2015. One cheque was dated 7 February 2015 and the second cheque was dated 21 February 2015. Both of these cheques were in the amount of \$497.50, that is, one half of rent.

On 5 February 2015, the landlord wrote to the tenant acknowledging receipt of the two post-dated cheques. The landlord wrote:

The partial payment is accepted for the use and occupancy only and does not reinstate the tenancy; and the tenant must vacate in accordance with the Notice to End Tenancy.

The landlord testified that as of the date of this hearing, the tenant had no rent arrears. The tenant testified that she always paid her rent in full.

The tenant testified that she had an oral agreement with the landlord to pay her rent in two equal payments. The landlord testified that her agreement with the tenant was that rent was due on the first.

The tenant testified that she did not contact the landlord to attempt to pay rent before the expiration of the five days granted pursuant to the 10 Day Notice.

Analysis

The landlord and tenant largely agree as to what occurred in respect of this tenancy. The main issue of contention appears to be whether rent was due on the first of the month and whether the tenant paid her rent so as to cancel the 10 Day Notice.

Res judicata is the legal doctrine preventing, among others, the rehearing of an issue that has been previously settled by a judicial decision. There are three elements to this doctrine:

- an earlier binding decision has been made on the issue,
- a final judgment on the merits has been made, and

- the involvement of the same parties.

In this case, there is a final and binding earlier decision between these parties on the legal issue of the date rent is due. On this point, I find that I am bound by the finding of the previous arbitrator. Accordingly, rent for this tenancy is due on the first of the month.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

A posted-dated cheque's true date of payment is the future date on which it may be negotiated and not the date on which it was received: *Keyes v. The Royal Bank of Canada*, [1947] S.C.R. 377 cited in *Sereda v. Ni*, 2014 BCCA 248. Therefore, the tenant did not pay her rent in full when it was due or within the five days as permitted by the Act.

The tenant has not provided any evidence that she was entitled to deduct any amount from rent. I find that the 10 Day Notice is valid. As the 10 Day Notice is valid, this required the tenant to vacate the premises by 12 February 2015.

As the tenant has been unsuccessful in her application, I decline to award the tenant her filing fee.

Conclusion

The tenant's application is dismissed without leave to reapply.

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: February 25, 2015

Residential Tenancy Branch

