



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, FF

Introduction

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

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- 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 elected to call one witness an RCMP officer. The tenant elected to have her agent act for her in the course of these proceedings. The agent is an occupant of the rental unit.

No issues of service were raised by either party at the hearing.

At the hearing the landlord made an oral request for an order of possession in the event that I upheld the 10 Day Notice.

Preliminary Issue – Order for Evidence After Hearing

Neither party submitted a copy of the 10 Day Notice. Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) provides that I may direct that evidence be submitted after the commencement of a hearing. As the tenant and landlord both have a copy of the 10 Day Notice, there is no undue prejudice to the parties by my acceptance of the 10 Day Notice after the hearing. I order that the landlord submit the 10 Day Notice by fax.

Issue(s) to be Decided

Is the tenant entitled to more time to make her application to cancel the 10 Day Notice? Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

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

The landlord testified that on 2 June 2015 she served the 10 Day Notice by posting it to the tenant's door. The 10 Day Notice set out that the tenant had failed to pay \$890.00 that was due 1 June 2015. The 10 Day Notice set out an effective date of 15 June 2015.

The landlord testified that the tenant has rent arrears totaling \$2,590.00:

Item	Amount
Unpaid May Rent	\$40.00
Unpaid June Rent	850.00
Unpaid July Rent	850.00
Unpaid August Rent	850.00
Total Monetary Order Sought	\$2,590.00

The landlord testified that she did not receive any payment towards rent arrears between the 2 June 2015 and 10 June 2015. The landlord testified that the tenant's last payment towards rent was in May. The landlord testified that the payment received in May was all of April's rent and a portion of May's rent.

The landlord testified that historically the tenant paid her rent in cash by placing an envelope in the landlord's mailbox. The landlord testified that no one else has access to her suite. The landlord testified that she was not aware of any reason that the tenant was entitled to deduct any amount from rent. The landlord testified that she has not received any amount in rent since the issuance of the 10 Day Notice. On cross-examination the agent asked the landlord why she was providing misleading testimony. The landlord responded that she was not providing misleading testimony.

The landlord elected to call an RCMP corporal to testify. The RCMP officer provided evidence that could generally go to the character of the agent.

The agent testified that the tenant paid her rent for June. The agent testified that the tenant paid her rent by placing the rent in the landlord's mail slot. On cross examination, the agent admitted that the tenant did not pay her rent on 1 June 2015 as he testified but perhaps paid it on the second or third of the month. The agent testified that the tenant has a history of paying

rent “with grace” in that the landlord would allow the tenant to pay rent late such as the time in May 2015.

The agent testified that the tenant has a health problem. The agent testified that a friend of the tenant was supposed to file the application for dispute resolution but did not deal with it in time. I was not provided with any corroborating evidence for this testimony. The tenant filed her application 12 June 2015.

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

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.

The agent testified that the tenant paid her rent. The landlord testified that the tenant has rent arrears for May, June, July and August totalling \$2,590.00. The landlord and agent agree that historically rent amounts have been paid in cash. The agent testified that the landlord failed to provide receipts for the cash payments for amounts received other than January’s rent. The agent testified that rent was paid with the exception of August rent. On cross examination the content of the application was put to the agent and he then testified that the tenant tried to pay rent and that the landlord refused it. The landlord denies that any payments were made for June, July or August and says that she did not refuse any payments. The landlord testified that rent arrears for May were \$40.00.

There is no corroborating evidence for either version of events. Where two testimonies are in stark contrast with each other and there is no corroborating evidence for either version, it is necessary for me to make a decision on credibility of the parties. Various tools can assist me in determining credibility such as character evidence, plausibility, and consistency of testimony.

The landlord elected to call an RCMP corporal to testify. The RCMP officer provided evidence that could generally go to the character of the agent; however, none of the evidence of bad acts and associates “known to police” went to the tendency of the agent to tell or not to tell the truth. The RCMP officer was limited as to the information that she could provide me. As such, there is little probative value to the RCMP officer’s evidence and I have not considered it in relation to my credibility assessment of the agent.

The landlord established that the agent altered his testimony during the course of the hearing with respect to June’s rent. As well, I find that the landlord’s testimony is more plausible than the agent’s. On the basis of the agent’s inconstancies and the lack of plausibility of his version

of events, I prefer the testimony of the landlord. As such, I find that the tenant had rent arrears of \$640.00 on 2 June 2015.

The landlord testified that the tenant did not pay the rent arrears within five days of receiving the 10 Day Notice. I was not provided with any evidence that indicates that the tenant was entitled to deduct any amount from rent. I was not provided with any evidence that indicates that the landlord has waived her right to enforce the 10 Day Notice.

As the tenant has failed to pay her rent in full when due, I find that the 10 Day Notice issued 2 June 2015 is valid and dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply. As the tenant's application to cancel the 10 Day Notice is dismissed, the landlord was entitled to possession of the rental unit on 15 June 2015, the effective date of the 10 Day Notice. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

As I upheld the 10 Day Notice on its merits, I do not need to consider whether or not the tenant was entitled to an extension of time to file her application as it was not necessary to rely on the conclusive presumption set out in subsection 46(5) of the Act.

As the tenant has not been successful in her application, she is not entitled to recover her filing fee.

Conclusion

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

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) 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 subsection 9.1(1) of the Act.

Dated: August 14, 2015

Residential Tenancy Branch

