



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR

Introduction

The tenant applied under the *Residential Tenancy Act* (the “*Act*”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated September 3, 2015.

The tenant and the landlords attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained to the parties and the parties were provided the opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The landlords confirmed that they received the documentary evidence from the tenant and that they had the opportunity to review that evidence prior to the hearing. The landlords confirmed that they did not submit documentary evidence in response to the tenant’s application. I find the landlords were served in accordance with the *Act*.

Preliminary and Procedural Matter

During the hearing, the landlords requested to have their agent added as they are currently out of the country. As a result, and given that such a request does not prejudice either party, the landlords’ agent, D.O. was added as their agent so that a copy of this decision will be mailed to the landlords’ agent.

Issue to be Decided

- Should the 10 Day Notice dated September 3, 2015 be cancelled?

Background and Evidence

The parties agreed that a month to month tenancy began on April 15, 2014 and that monthly rent of \$475 was due on the first day of each month.

The landlords stated that their agent served the tenant with the 10 Day Notice dated September 3, 2015 on September 3, 2015. The tenant originally stated that she received the 10 Day Notice on September 3, 2015, and then changed her testimony by stating she was served in August 2015. When the tenant was reminded that the 10 Day Notice was not dated until September 3, 2015, the tenant changed her testimony again by claiming that she was not served until September 4, 2015. The tenant applied to dispute the 10 Day Notice on September 9, 2015.

The amount listed as owing on the 10 Day Notice is \$4,100 which the tenant confirmed was unpaid during the hearing. The effective vacancy date listed on the 10 Day Notice was September 13, 2015. During the hearing, the landlords made an oral request for an order of possession, and agreed to have the order of possession for October 31, 2015 at 1:00 p.m. versus a two-day order of possession.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant changed her testimony three times regarding the date she received the 10 Day Notice, I prefer the evidence of the landlords as it is more reliable as the landlords' testimony did not change during the hearing. As a result, I find the tenant received the 10 Day Notice on September 3, 2015. Therefore, I find the tenant did not apply to dispute the 10 Day Notice within the five day timeline provided for under section 46 of the *Act*. Pursuant to section 46 of the *Act*, a tenant is conclusively presumed to have accepted that the tenancy ends on the effective vacancy date of the 10 Day Notice if they do not apply to dispute the 10 Day Notice within five days. As a result of the above, I find the tenancy ended on September 13, 2015, the effective vacancy date listed on the 10 Day Notice. I dismiss the tenant's application to cancel the 10 Day Notice as a result. I uphold the 10 Day Notice dated September 3, 2015.

Although the tenant did not dispute the 10 Day Notice, I note that the tenant did not dispute that she owed \$4,100 in unpaid rent as claimed by the landlords, so even if she had applied on time, which she did not, her application would have been dismissed as she failed to pay rent in accordance with the agreed-upon terms of the tenancy.

The landlords made an oral request for an order of possession during the hearing. Section 55 of the *Act* states:

Order of possession for the landlord

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.

[my emphasis added]

Given the above and taking into account the landlords' oral request for an order of possession during the hearing, I find that the landlords are entitled to an order of possession effective **October 31, 2015 at 1:00 p.m.** which is the date requested by the landlords during the hearing. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that court.

Conclusion

The tenant's application is dismissed.

The landlords have been granted an order of possession effective October 31, 2015 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 20, 2015

Residential Tenancy Branch

