



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Property Management Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

The tenant attended the hearing with a Legal Advocate. However, the line remained open while the phone system was monitored for 15 minutes prior to hearing any testimony and no one for the landlord attended. The tenant's legal advocate advised that the landlord was served with the Tenant's Application for Dispute Resolution and notice of this hearing by registered mail on November 4, 2015, and that a copy of the Registered Domestic Customer Receipt was faxed to the Residential Tenancy Branch. However no copy has been received by me. The advocate also advised that the Canada Post tracking system shows that the mail was received by the landlord on November 9, 2015. The Legal Advocate was permitted to send to me a copy of the Canada Post tracking document after the hearing had concluded. I have now received that document, as well as a copy of the Registered Domestic Customer Receipt stamped by Canada Post, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*. The tenant gave affirmed testimony and provided evidentiary material in advance of the hearing, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Should the notice to end the tenancy for unpaid rent or utilities be cancelled?

Background and Evidence

The tenant testified that this tenancy began on April 15, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$835.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from

the tenant in the amount of \$400.00 as well as a pet damage deposit in the amount of \$200.00, both of which are still held in trust by the landlord.

The tenant further testified that the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. The tenant located it on November 2, 2015. A copy has been provided, and it is dated November 2, 2015 and contains an effective date of vacancy of November 12, 2015 for unpaid rent in the amount of \$700.00 that was due on November 1, 2015. The tenant has provided receipts dated November 19, 2015 in the amount of \$527.42 and November 26, 2015 in the amount of \$197.74, which total \$725.16. A copy of a receipt dated November 26, 2015 in the amount of \$300.00 has also been provided which shows that it was applied to rent for December, 2015.

The tenant seeks to have the notice cancelled, as the landlord has received the rent noted in the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and has reinstated the tenancy by continuing to collect rent after the effective date of the notice.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. In this case, no one for the landlord attended the hearing to provide any testimony or evidence that it was given in accordance with the *Act*. The tenant testified that the rent that was outstanding at the time the notice was issued has been paid and provided evidence of having done so, and I hereby cancel the notice.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2015 is hereby cancelled and the tenancy continues.

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: January 05, 2016

Residential Tenancy Branch

