



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE GLENAYRE REALTY CHILLIWACK LTD. e suppressed to protect privacy]

DECISION

Dispute Codes cnr, aat, mnr, opr, ff

Introduction

The tenant applies for an order cancelling a 10 Day Notice to End Tenancy (for unpaid rent) given by the female owner of the premises to the tenant. The landlord applies for an Order of Possession, a Monetary Order for unpaid rent and the landlord's filing fee, all related to a subsequent 10 Day Notice to End Tenancy (for unpaid rent) given by the owner's property management company to the tenant, and never formally disputed by the tenant. The tenant and an agent of the property management company attended the hearing. The female owner did not attend.

The tenant added a monetary worksheet to her evidence, which appears to be an effort to amend her claim and seek a monetary order from the landlord. I decline to hear this portion of the claim, as an amendment of that nature appears to be an abuse of process, fails to comply with the required rules of procedure, and is not properly joined in any event, given that the claim is not related in law or fact to the initial application, which is to cancel a 10 Day Notice for unpaid rent.

Issues to Be Decided

- Is the 10 day Notice to End Tenancy issued by the owner effective to end this tenancy, and entitle the landlord to an Order of Possession, or should the Notice be cancelled, and the tenancy continue?
- Is the 10 day Notice to End Tenancy issued by the property management company effective to end this tenancy, and entitle the landlord to an Order of Possession, or should the Notice be cancelled, and the tenancy continue?
- Is there rent money due and payable by the tenant to the landlord?
- Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The tenant testified that her tenancy began November 15, 2015, and monthly rent was \$800.00, payable of the 1st day of each month. She paid \$800.00 on November 15, 2015, representing her security deposit of \$400.00, and rent for the half month of November. She paid December's rent in full, and on time. She paid January's rent late, on January 10th. She tried to pay rent for February to the owner, who would not accept

it. No rent was paid for March. She does not recall when she filed her application. She acknowledged receiving a 10 Day Notice on February 5, 2016 from the property management company, but did not know who they were, and never paid any rent to them.

The landlord's property management company's agent testified that her company began managing this property for the landlord at the end of January. Rent for February was not paid, and a 10 Day Notice was served to the tenant on February 5, 2016. No rent was subsequently paid, and at the time \$1,200.00 was owing.

Documentary evidence includes a copy of the tenancy agreement of December 1, 2015 (which indicates the tenancy would begin December 15, 2015), as well as copies of a security deposit receipt dated December 3, 2015 and a rent receipt for \$400.00 dated December 15, 2015.

Analysis

The tenant acknowledged some confusion over dates in her testimony, and I note that her testimony as to the start of the tenancy does not coincide with the terms of the tenancy agreement. I prefer the information provided on that written agreement to the effect that this tenancy began December 15, 2015. As supported by dates on submitted receipts, I find that a half month's rent was paid for December, and that a security deposit of \$400.00 was paid.

I further find that two 10 Day Notices were given to the tenant. The first was given to the tenant by the female owner, and the copy tendered into evidence indicates it was dated January 5, 2016. It was this Notice therefore that was the subject of the tenant's dispute, given that her claim was dated February 3, 2016, on which date she had not yet received the second 10 Day Notice from the landlord's agent. The landlord's agent submitted her understanding that this Notice had been rendered void and the tenancy reinstated, by acceptance by the owner of late rent from the tenant. This coincides with the tenant's testimony that January rent was paid on January 10, 2016, and I therefore accept that such rent was paid. The first Notice was therefore cancelled as a result, and the tenancy continued.

The 2nd 10 Day Notice was given February 5, 2016. The tenant never disputed of, and I accept the testimony of the landlord's agent that no further rent was paid by the tenant. I do not accept the tenant's testimony that she was confused about who she was to pay her rent to. This was easily resolved through a phone call to the owner, to confirm that the management company identified on the Notice was in fact now agent of the landlord. Section 26(1) of the Residential Tenancy Act requires that tenants must pay rent when it is due under the tenancy agreement. When no rent was paid for February as required, the landlord's agent was therefore entitled (pursuant to section 46 of the Residential Tenancy Act) to serve the 10 Day Notice ending this tenancy. Upon receipt of that notice, the tenant should have paid the rental arrears to the landlord's agent within the required 5 day period, in order to have the tenancy continue. The tenant failed to do so, and is conclusively deemed to have accepted the end of the tenancy pursuant

to section 46(5)(a) of the Residential Tenancy Act. The second 10 Day Notice (dated February 5, 2016) is therefore found effective to end this tenancy, and the landlord has established a right to possession. Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective 48 hours following service upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

I accept that the landlord has received no rent for February, and award the sum of \$800.00 to the landlord. The landlord has also received no rent for March, but I note that the landlord has made access difficult for the tenant by placing a lock on the entry gate. I therefore find that the tenant only need pay the sum of \$400.00 for rent for a portion of March. The landlord shall also recover from the tenant the sum of \$100.00 as recovery of the landlord's filing fee. The total awarded therefore, is \$1,300.00.

The tenant also applies for access to the premises (an access gate is locked) to retrieve two loads of possessions that remain there. Although she requested more time, it was agreed by the landlord's agent (and I find reasonable, and order) that the tenant be granted access to the rented premises from 9:00 am to 5:00 pm, on March 23, 2016 for the express purpose of allowing the tenant to peacefully retrieve all of her possessions.

Conclusion

Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective 48 hours following service upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is awarded \$1,300.00.

I order that the landlord grant access to the tenant to the rented premises from 9:00 am to 5:00 pm, on March 23, 2016 for the express purpose of allowing the tenant to peacefully retrieve all of her possessions.

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: March 21, 2016

Residential Tenancy Branch