



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC KINSMEN HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes cnr

Introduction

The tenant applies for an order to cancel a 10 Day Notice to End Tenancy.

The tenant and the landlord's representative were both present and testified at the hearing. The landlord confirmed receipt of the tenant's claim, and the tenant confirmed receipt of the landlord's package of evidence. Both parties provided testimony at the hearing.

Issue(s) to be decided

Should the Notice be cancelled, or is it valid to end the tenancy and entitle the landlord to an Order of Possession?

Background and Evidence

This month-to-month tenancy began on May 1, 2015, with subsidized monthly rent of \$561.00, due on the first day of each month. The tenant unexpectedly was cut off from her social assistance, and therefore did not pay February rent on February 1, 2016. The landlord served the tenant a 10 Day Notice to End Tenancy by registered mail on February 2, 2016, and the tenant received it on February 4, 2016. The tenant filed her dispute of the Notice on February 5, 2016.

The landlord testified that February's rent was subsequently paid February 25, 2016, and a receipt for the rent was provided, which confirmed that the rent had been accepted on a use and occupation basis. March rent was paid March 16, 2016, and has also been accepted by the landlord on a use and occupation basis.

The tenant testified she has successfully appealed the decision denying her assistance, and that her rent would be paid on time in the future.

Analysis

It is clear and not in dispute that the February rent was not paid on time, as required by the tenancy agreement and by section 26 of the Residential Tenancy Act. It is also clear that the tenant was properly served and received the landlord's 10 Day Notice to End Tenancy on February 4, 2016. That Notice required that the rent be paid within 5 days of receipt of the 10 Day Notice, but in fact the rent was not paid within that time frame. I have no authority under the Residential Tenancy Act to order an extension of time to

pay rent, unless the landlord agrees, or unless the unpaid rent was permitted as a result of emergency repairs or under an Order (as per section 66(2) of the Residential Tenancy Act). Those circumstances do not exist in this case. I further note that the 10 day Notice was effective to end the tenancy February 14, 2016, and the rent was not paid until February 25, 2016, by which time the tenancy had ended (subject to the outcome of the tenant's dispute). That February rent payment did not invalidate or void the 10 day Notice to End Tenancy, or reinstate the tenancy, although it effectively permitted the tenant to continue her occupancy until February 29. The subsequent payment of March rent further extended the tenant's right of occupancy to March 31, 2016, but did not reinstate the tenancy.

In summary, the tenancy has ended as a result of the failure of the tenant to pay her February rent as required, and at the latest within 5 days of the receipt of the 10 day Notice. The tenant's application to cancel the Notice is dismissed.

Section 55 (1) of the Residential Tenancy Act provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice is proper as to form and content, and the tenant's application to cancel the Notice is dismissed. Those conditions are met, and accordingly, an Order of Possession is granted to the landlord, effective the end of the occupation period which is March 31, 2016.

Conclusion

The tenant's application is dismissed. The landlord is granted an Order of Possession, effective March 31, 2016.

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 23, 2016

Residential Tenancy Branch