



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cathay Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This was a hearing with respect to an application by the tenant to cancel a 10 day Notice to End Tenancy for unpaid rent. The hearing was conducted by conference call. The tenant and the landlord's representative called in and participated in the hearing. The landlord's representative acknowledged that she received the tenant's application for dispute resolution filed on February 22, 2016.

Issue(s) to be Decided

Should the Notice to End Tenancy dated February 9, 2016 be cancelled?

Background and Evidence

The rental unit is a residence in Surrey. The tenancy began August 1, 2014. The monthly rent is \$1,400.00, payable on the first of each month. The tenant is also responsible for paying monthly utilities in the amount of \$200.00. The tenant paid a security deposit of \$700.00 at the start of the tenancy. The landlord testified that the tenant was behind in her rent payments. On February 3, 2016 the tenant paid a sum of money partly in cash and partly by Visa cheque. The landlord said the tenant paid \$750.00 in cash and \$500.00 by a U.S. dollar Visa cheque. According to the landlord's receipt, after the payment, the tenant still owed part of February rent in the amount of \$420.00 and \$300.00 for Hydro. The landlord said that the tenant's Visa Cheque could not be cashed and on February 9, 2016, after she found out that she could not negotiate the cheque, she served the tenant with a 10 day Notice to End Tenancy for unpaid rent by attaching it to the door of the rental unit.

The tenant applied to cancel the Notice to End Tenancy on February 22, 2016. The tenant testified that she paid the February rent in full, but the landlord returned her Visa

cheque torn in half. She said that there was no reason why it could not be cashed and suggested that the landlord returned in order to have an excuse for evicting her. The tenant testified that she has not paid rent for March or April because she was told by the Residential Tenancy Branch that she should not contact the landlord.

Analysis

I accept the landlord's testimony that rent for February was not paid in full and the tenant's Visa cheque could not be cashed. I prefer her evidence to the tenant's evidence because it is consistent with the receipt provided by the tenant, which recorded the amounts outstanding after the February payment was taken into account. The tenant has not paid rent for March or April and as well the tenant's application was not filed until February 22, 2016. The application was posted to the door of the rental unit on February 9, 2016. Pursuant to section 90 of the *Residential Tenancy Act* it was deemed to have been received on February 12, 2016, the third day after it was attached. The tenant had five days within which to apply to cancel the Notice to End Tenancy, but she applied on the 10th day after it was deemed to have been received.

I find that the tenant not established any basis to cancel the Notice to End Tenancy and her application is dismissed without leave to reapply.

Section 55 of the *Residential Tenancy Act* provides:

- 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 to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Conclusion

The tenant's application has been dismissed without leave to reapply. The tenant has been served with a Notice to End Tenancy in the proper form as required by the Act and the landlord is entitled to an order for possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that court.

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: April 13, 2016

Residential Tenancy Branch