



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 3, 2016 ("10 Day Notice"), pursuant to section 46; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and her agent, HJ (collectively "landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that her agent had authority to speak on her behalf at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and the tenant confirmed receipt of the landlord's written evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application and the tenant was duly served with the landlord's written evidence.

The tenant confirmed receipt of the landlord's 10 Day Notice on May 4, 2016, while the landlord said that it was left under the tenant's rental unit door on May 3, 2016. In accordance with section 71(2)(c) of the *Act*, I find that the tenant was sufficiently served with the landlord's 10 Day Notice on May 4, 2016. Although the landlord did not serve the tenant in accordance with section 88 of the *Act*, I find that the tenant received the notice, as she disputed it at this hearing.

At the outset of the hearing, the tenant confirmed that she applied to recover the filing fee in error, as she never paid one since it was waived. Accordingly, this portion of the tenant's application is dismissed without leave to reapply.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

Both parties agreed to the following facts. This tenancy began on June 1, 2013 for a fixed term of one year after which it transitioned to a month-to-month tenancy. Monthly rent in the amount of \$725.00 is payable on the first day of each month and an additional \$10.00 is due for cable services each month. A security deposit of \$400.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit. The landlord provided a copy of the written tenancy agreement.

The landlord issued a 10 Day Notice for unpaid rent of \$735.00 due on May 1, 2016. The tenant confirmed that she was aware this was for rent of \$725.00 plus the additional \$10.00 due for cable services, both for May 2016. The notice indicates an effective move-out date of May 15, 2016. The landlord said that the tenant has not paid rent for May 2016. The landlord provided bank statements from December 2015 to May 2016, explaining that the tenant would pay her rent in cash and the landlord would deposit it into her bank account. The landlord outlined each time she made a deposit of the cash from the tenant for rent. The landlord said that sometimes she used some of the cash for herself and deposited the remaining amount into her bank account. The landlord provided a bank statement for May 2016, indicating that there were no deposits made because the tenant did not pay her rent.

The tenant testified that she paid \$725.00 for May 2016 rent in full to the landlord. She confirmed that the landlord did not provide her with any rent receipts for her cash payments. The tenant advised that she did not provide any documentary evidence from her bank showing that she made withdrawals for rent for May 2016. The tenant did not provide any witness evidence of how and when she paid the landlord cash for May 2016 rent.

Analysis

I find that the tenant failed to pay the full rent of \$725.00 due on May 1, 2016, within five days of receiving the 10 Day Notice. Although the tenant made an application on May 6, 2016, pursuant to section 46(4) of the Act within five days of receiving the 10 Day Notice, she did not provide documentary or witness evidence to show that she paid rent

to the landlord for May 2016. The landlord on the other hand, provided bank statements for a six-month period during this tenancy to show the dates that the tenant made previous rent payments and the month of May 2016 when the tenant did not pay any rent. In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the rent within five days led to the end of this tenancy on May 15, 2016, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by May 15, 2016. As this has not occurred, I find that the landlord is entitled to a two (2) Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. Accordingly, I dismiss the tenant's application to cancel the 10 Day Notice, without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant's entire application is dismissed without leave to reapply.

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: June 09, 2016

Residential Tenancy Branch