



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, OPC, MNR
 Tenant: MT, CNR, CNC, RR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The tenant sought more time to cancel a notice to end tenancy; to cancel a notice to end tenancy; and an order to have the landlord complete repairs. The landlord sought an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant. The tenant had arranged for a witness to attend.

I note the hearing began at 9:30 the tenant; her witness; and the landlord's agent were on the call. Prior to beginning the hearing, I reviewed both applications with the respective applicants and we dealt with some preliminary matters such as the correct name for the landlord and having the tenant's witness step outside of the room until we needed her testimony.

I discussed with the tenant the portion of her Application seeking more time to submit her Application for Dispute Resolution to cancel both the 10 Day and the 1 Month Notice. I determined that in both cases the tenant had submitted her Application within the required deadlines for each type of notice. As a result, I determined the request for more time was moot and I amended the tenant's Application to exclude the request for more time.

During this time, I noted that the tenant's phone appeared to be echoing. She stated that it was her phone. I advised that if we had difficulty understanding the tenant we may have to develop a different way to proceed.

I began the hearing by having the landlord present his submissions regarding the 10 Day Notice. Once the landlord had completed his submission I asked the tenant to

respond. Instead the tenant left the hearing at approximately 9:43. I suspended the hearing hoping to have the tenant call in and I allowed 7 minutes for the tenant to do so. When the tenant did not call into the hearing in that time I recommenced the hearing, until I concluded it by 9:52. The tenant never did call back into the hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and/or cause; to a monetary order for unpaid rent, pursuant to Sections 46, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; a 1 Month Notice to End Tenancy for Cause and an order to have the landlord complete repairs, pursuant to Sections 32, 46, and 47 of the *Act*.

Background and Evidence

The parties agreed the tenancy began on April 24, 2014 as a month to month tenancy for a monthly rent of \$800.00 due on the 1st of each month with a security deposit of \$400.00 paid.

The landlord submitted that the tenant failed to pay rent for the month of June 2016 and that when she still hadn't paid it by June 6, 2016 he issued the 10 Day Notice. Both parties provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on June 6, 2016 with an effective vacancy date of June 16, 2016 due to \$800.00 in unpaid rent.

The landlord submitted the Notice was posted to the rental unit door on June 6, 2016. The tenant acknowledged receiving this Notice on June 7, 2016.

The landlord testified that as of the date of this hearing he has received no payment from the tenant for the month of June or July 2016. The landlord seeks a monetary order only for the amount of \$400.00.

Analysis

While the tenant did attend the hearing she left the hearing prior to the submission of any of her evidence or any response to the landlord's testimony regarding the 10 Day Notice. As a result, I find the tenant has failed to present her case as outlined in her

Application for Dispute Resolution and I dismiss her Application in its entirety without leave to reapply.

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has the right under this *Act* to deduct all or a portion of the rent.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice.

While the tenant did submit an Application for Dispute Resolution seeking to dispute the 10 Day Notice within 5 days of receipt of the Notice, I find that she has presented no evidence that she had any authority under the *Act*, regulation, or tenancy agreement to withhold any amount of rent from the landlord.

As a result, of the landlord's undisputed testimony that the tenant had failed to pay rent for the month of June 2016 even after the tenant was served with the 10 Day Notice, I find the landlord has established he had grounds under Section 46 to issue the 10 Day Notice to End Tenancy and that the Notice is enforceable as the tenant has failed to pay rent since the Notice was issued.

Also based on the landlord's undisputed testimony I find that the tenant owes the landlord \$1,600.00 in unpaid rent. However, I grant the landlord a monetary order in the amount of \$400.00 for this as requested by the landlord.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$400.00** comprised of some rent owed.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: July 20, 2016

Residential Tenancy Branch