



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution (the "Application") originally filed November 1, 2016 (corrected version filed November 4, 2016) seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"). The Application was brought under section 46(4) of the *Residential Tenancy Act* (the "Act").

Both the tenant and the landlord attended the hearing and gave affirmed testimony. The landlord's wife was called as a witness for the landlord. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, to make submissions, and to respond to the submissions of the other party.

The tenant confirmed that she received the landlord's 10 Day Notice dated October 31, 2016 with an effective date of November 9, 2016 on October 31, 2016. The 10 Day Notice indicated rent of \$1,900.00 due October 1, 2016. The landlord testified that this represents unpaid October rent and outstanding rent that has not been "made up" from a missing payment in February.

At the outset of the hearing the tenant advised that she had not meant to check the "other" box on her Application and was not actually seeking relief other than the cancellation of the 10 Day Notice and I therefore amend her Application accordingly.

Also at the outset of the hearing I asked the parties if they would like an opportunity to settle their dispute and either continue the tenancy or end it on a specified date by agreement. At that point the tenant stated that she was not certain whether she wanted the tenancy to continue. The hearing was acrimonious: the parties accused one another of lying and spoke over one another. The landlord stated, and the tenant did not deny, that one of the tenant's friends had called the police alleging that the landlord was harassing the tenant by repeatedly demanding that she pay her rent. The tenant also alleged that the landlord had entered her unit without her consent. At the end of the hearing the tenant stated that she was "ready to leave" and had started packing. It

is clear that the parties no longer trust one another. However, the tenant did not want to withdraw her Application to cancel the landlord's 10 Day Notice.

Issues

Is the tenant entitled to an order cancelling the 10 Day Notice?

Background and Evidence

No tenancy agreement was submitted in evidence. The parties agreed that the tenancy began on July 1, 2015 with a monthly rent of \$1,200.00 due on the first of each month, that a security deposit of \$600.00 was paid at the start of the tenancy, and that the landlord did not initially issue receipts for the rent. Both parties also agreed that the landlord began accepting the tenant's rental payment, which was always paid in cash, in two monthly installments several months into the tenancy.

The landlord testified that the tenant failed to pay rent in February of 2016, whereas the tenant stated that she believed that she handed February's rent to the tenant's wife in cash. Both parties agreed that the landlord had not been issuing the tenants receipts at this point. Based on this inconsistency I called the landlord's wife, who testified that she had not received rent in cash from the tenant in February. The landlord's wife also appeared to state that she had never accepted rent from the tenant, which the tenant disagreed with, stating that she often handed payment to the landlord's wife rather than the landlord. English was not this witness' first language and I am unable to give her evidence much weight as a result our communication difficulties.

Both parties submitted some documentary evidence. The landlord submitted the following:

1. A handwritten ledger showing amounts paid throughout the tenancy. Among other things the ledger records that rent was not paid for either February or September of 2016.
2. A signed statement from the tenant dated July 3, 2016 that reads: "I will pay 1200 plus an extra 300\$ until that missing 1200\$ is paid. it will take me 4 months to pay it off." [reproduced as written] The tenant admitted having written and signed this statement.

3. A receipt dated October 15, 2016 recording payment of \$240.00 from the tenant "for Sept rent."

The tenant submitted copies of receipts from the landlord for payments between June and October, 2016 as follows:

1. A receipt dated June 15, 2016 recording payment of \$300.00 from the tenant for "June rent."
2. A receipt dated July 2, 2016 recording payment of \$890.00 from the tenant "for June month rent."
3. A receipt dated July 12, 2016 recording payment of \$300.00 marked "July month rent."
4. A receipt dated August 2, 2016 recording payment of \$200.00 from the tenant "for back [?] month."
5. A receipt dated August 9, 2016 recording payment of \$200.00 from the tenant.
6. A receipt dated August 31, 2016 recording payment of \$1,200.00 from the tenant "for August month rent."
7. A receipt dated October 1, 2016 recording payment of \$960.00 from the tenant "which is short \$240.00 for Sept rent."

Both parties confirmed that they had received copies of the other party's evidence as set out above. The tenant also advised that she had submitted copies of monthly bank statements to the Residential Tenancy Branch. These were not before me but the landlord had received copies of the statements separately. The tenant stated that these statements established that she had ample money in her account in February, and that this supports her position that she did pay February's rent. She also testified that she was in February receiving a BC Housing subsidy, which also showed that she was able to pay rent.

The tenant testified that she was confused by the landlord's accounting, and that she believed that it was confusing because of the allegedly missing February 2016 rent.

Analysis

Section 46 of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after it is due by giving notice to end the tenancy effective on a date no earlier than 10 days after the tenant receives the notice. Under subsection (4), the tenant has 5 days after receipt of the notice to pay the overdue rent or dispute the notice by making an application for dispute resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. In the case before me, the 10 Day Notice was dated and served on October 31, 2016, and the tenant applied to dispute it within the 5 day timeline permitted by s. 46. Accordingly, I must consider whether the tenant has established that she has paid rent as she maintains she has.

Section 26 of the Act requires that a tenant pays rent when it is due under the tenancy agreement unless the tenant has a right under the Act, regulations, or tenancy agreement, to withhold all or a portion of the amount owing. The tenant has not argued that she had a right to withhold any money. She has simply said that she believes she has paid the rent. However, she testified that she accepted the landlord's receipts without objecting to any of the remarks recorded on them.

The landlord has produced his handwritten ledger which records that the tenant failed to pay both February and October, 2016 rent. The tenant denies having failed to pay February rent, but admits having provided the landlord with a signed statement in July committing to repay February's rent in installments over 4 months. She said she wrote this statement before she looked at her bank balance around February and saw she had ample money to pay and that money had been withdrawn. I am not required to make any finding on whether the tenant paid February rent, which was at a time when the landlord was not providing receipts in any event, because the tenant has not been able to establish that she paid rent for October.

The receipts submitted by the tenant are consistent with the landlord's accounting ledger. One of them records the payment of \$960.00 on October 1, 2016 and states "short \$240.00 for Sept rent." The landlord has submitted a receipt dated October 15, 2016 for \$240.00 marked "for September rent." This is the most recent receipt in evidence from either party. I therefore find that tenant has thus not paid October rent and uphold the landlords' October Notice.

Section 55 of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy, the director must grant the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with s. 52 and (b) the director upholds the landlord's notice. As set out above, the landlord's October Notice complies with s.

52, and is by this decision upheld. The landlord is as a result entitled to an Order of Possession pursuant to s. 55 of the *Act*.

The landlord should note for future that s. 26(2) of the Act requires that the landlord issue receipts for the payment of rent in cash.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. This order must be served on the tenant and if the tenant fails to move out, it may be enforced in the Supreme Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 2, 2016

Residential Tenancy Branch