



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This was a hearing with respect to the landlord's application for an order of possession. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing. The landlord's boyfriend was present during the hearing with the landlord, but he did not participate.

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to a 10 day Notice to End Tenancy for unpaid rent?

Background and Evidence

The rental unit is the upper suite in a house in Port Coquitlam. The landlord is the registered owner. The tenant is her sister and she lives in the rental unit with the landlord's mother. The tenant pays rent to the landlord in the amount of \$700.00 per month. The rent is due on the first of each month. The landlord testified that the tenant did not pay rent for January when it was due. The landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent dated January 2, 2017. She said the Notice was personally serve to the tenant by her boyfriend, B.C. on January 2, 2017. At the same time the tenant was also given a one month Notice to End Tenancy for cause.

The landlord testified that the tenant did not pay the rent until January 9, 2017; it was paid in cash and the landlord gave the tenant a receipt for the payment stating that it had been accepted: "for use and occupancy only". The tenant has paid rent for February and the landlord issued a similar receipt for that payment.

The landlord said that her mother who suffers from cancer lives in the house and she intends to enter into a new tenancy agreement with her mother as the sole occupant of the house if the tenant is evicted.

The tenant acknowledged that she pays rent of \$700.00 to her sister. She said that she regularly leaves the rent in a specific location at the house for her sister to pick up. She said that her sister failed to pick up the rent and it was not late. The tenant said she was served with two Notices to End Tenancy and she was not aware that she had been given a 10 day Notice to End Tenancy. The tenant did not make an application to cancel the Notice. She said that she is looking for another place to live and plans to move out at the end of February.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. I accept the landlord's evidence that the rent was not paid within five days, the tenant did not apply to dispute the Notice to End Tenancy and she is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. The tenant has paid the rent for January and February. The payments were accepted for use and occupancy only, but not to reinsate the tenancy and the landlord is entitled to an order of possession effective February 28, 2017 after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that court

Conclusion

The landlord has been granted an order of possession effective February 28, 2017.

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: February 08, 2017

Residential Tenancy Branch