



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on March 13, 2017 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 8, 2017 (the "10 Day Notice"); and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf. The Landlord also attended the hearing and was assisted by a family member, J.G. All parties giving oral testimony provided a solemn affirmation.

The Tenant testified the Landlord was served with the Application package by registered mail on March 16, 2017. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Landlord is deemed to have received the Tenant's Application package on March 21, 2017. The Landlord did not submit documentary evidence in response to the Tenant's Application.

No issues were raised about service of the Tenant's Application package. The parties were provided with the opportunity to present their evidence orally and in written and documentary form, and make submissions.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice?
2. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on or about September 1, 2015. Rent in the amount of \$850.00 per month is due on the first day of each month.

The Tenant seeks an order cancelling the 10 Day Notice. According to the Landlord, the Tenant had been having difficulty paying rent on time for a number of months. The Landlord testified that, as of March 1, 2017, the amount outstanding was \$1,300.00. Further, rent was not paid when due on April 1, 2017. The Landlord advised that \$2,150.00 is currently outstanding.

The Tenant disagreed with the amount outstanding but confirmed that rent has not been paid in full. The Tenant acknowledged that she currently owes \$450.00.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms a tenant must pay rent when due, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Further, pursuant to section 46 of the *Act*, a landlord may end a tenancy if rent remains unpaid on any day after the day it is due.

In this case, the Landlord asserted the Tenant did not pay rent when due on March 1, 2017. Accordingly, the Landlord issued the 10 Day Notice, which was served on the Tenant by posting a copy to the door of the Tenant's rental unit on March 8, 2017. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. I find the Tenant is deemed to have received the 10 Day Notice on March 11, 2017.

Pursuant to section 46 of the *Act*, the Tenant had until March 16, 2017, to pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution. Although I make no finding with respect to the amount of rent outstanding, which is in dispute, the Tenant acknowledged that \$450.00 remains unpaid. Accordingly, the Tenant's Application is dismissed.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. As I have dismissed the Tenant's Application and determined the 10 Day Notice complied with section 52 of the *Act*, I grant the Landlord an order of possession. The Order will be effective two (2) days after service of the order on the Tenant.

Conclusion

The Tenant's Application is dismissed and the 10 Day Notice is upheld.

By operation of section 55 of the *Act*, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an Order of the Supreme Court of British Columbia.

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 12, 2017

Residential Tenancy Branch