



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR

Introduction

The tenant applied under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 31, 2017 (the “10 Day Notice”).

The tenant, the landlord and the husband of the landlord attended the teleconference hearing. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the rules of procedure, and testimony provided.

The tenant originally testified under oath that she was not served with documentary evidence and later changed her testimony once the registered mail tracking number was confirmed on the registered mail tracking website which confirms that the landlord's registered mail package mailed on October 10, 2017 was signed for and accepted by the tenant on October 11, 2017. The registered mail tracking number has been included on the cover page of this decision for ease of reference.

The landlord testified that the registered mail package contained the landlord's documentary evidence. I find that the tenant was served with the landlord's documentary evidence in accordance with the *Act*. Other than the 10 Day Notice, the tenant did not service documentary evidence.

Preliminary and Procedural Matter

At the outset of the hearing, the tenant alleged that the landlord did not sound like the landlord so the landlord stated that it was the landlord and that her husband was also on the teleconference to confirm which the husband of the landlord did. In addition, the tenant was advised that all parties had the right to have an agent represent them at the hearing and that either way, I find there is no prejudice as the result would not change as a decision would be based on the evidence presented by both parties and in accordance with the *Act*, regulation and tenancy agreement. As a result, the hearing proceeded.

Issue to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?

Background and Evidence

A copy of the tenant agreement was submitted in evidence. A month to month tenancy began on April 12, 2012. Monthly rent of \$400.00 is due on the 25th day of each month.

The parties agreed that a 10 Day Notice dated July 31, 2017 was served on the tenant however neither party could recall the date that it was served. As a result and in the interests of fairness I find the tenant received the 10 Day Notice as of the date she disputed the 10 Day Notice which was August 8, 2017.

The 10 Day Notice indicates that rent of \$400.00 was not paid by June 1, 2017 and the tenant confirmed that she did not pay \$400.00 by June 1, 2017 due to her asking the landlord to bring in a professional to check for cameras in the rental unit. There was no evidence presented that rent for July, August, September or October 2017 has been paid by the tenant.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice to End Tenancy for Unpaid Rent – The tenant confirmed under oath that she did not pay rent of \$400.00 by June 1, 2017 as indicated on the 10 Day Notice. Section 26 of the *Act* requires that the tenant pay rent on the day that it is due in accordance with the tenancy agreement whether or not the landlord complies with the *Act*. Therefore, based on the above, I find the 10 Day Notice issued by the landlord to be valid and is upheld as the tenant failed to pay rent when it was due. I dismiss the tenant's application to cancel the 10 Day Notice based on the above due to insufficient evidence that the tenant had a right not to pay rent under the *Act*. Section 55 of the *Act* applies and states:

Order of possession for the landlord

- 55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[My emphasis added]

Based on the above, and taking into account that I find the 10 Day Notice complies with section 52 of the *Act*, I must grant the landlord an order of possession as the tenant's application has been dismissed. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenant as the tenant continues to occupy the rental unit and the effective date, which automatically corrects under section 53 of the *Act* to August 18, 2017 has passed. I find the tenancy ended on August 18, 2017 accordingly and that the tenant has been overholding since that date.

Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed without leave to reapply.

The tenancy ended on August 18, 2017. The landlord is granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that 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: October 27, 2017

Residential Tenancy Branch