



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR MNR
Tenant: CNR

Introduction

This hearing, held by teleconference on November 21, 2017, dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- An order of possession for unpaid rent or utilities; and,
- A monetary order for unpaid rent or utilities.

The tenant seeks an order to:

- Cancel the Notice to End Tenancy for Unpaid rent or utilities.

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

During the hearing, the Landlord stated that she no longer wants to pursue a monetary order for unpaid rent, and she is only looking for an order of possession for the rental unit. As such, I amend the Landlord’s application accordingly.

Issue(s) to be Decided

- Is the tenant entitled to have the landlord’s 10 Day Notices to End Tenancy cancelled?
 - If not, is the landlord entitled to an Order of Possession?

Background and Evidence

As per the tenancy agreement, and as discussed by both parties during the hearing, rent in the amount of \$1,100.00, is due on the first day of each month.

The Landlord testified that she posted the first 10 Day Notice to End Tenancy for Unpaid Rent (the first 10 Day Notice) on September 8, 2017. The amount owing at that time was \$1,100.00 for the month of September 2017. The Tenant acknowledged receiving this notice but was not sure when. The Tenant stated that she subsequently paid the Landlord the outstanding amount (\$1,100.00) on September 15, 2017.

The Landlord stated that her daughter posted a second 10 Day Notice to End Tenancy for Unpaid Rent (the second 10 Day Notice) on October 2, 2017. The Tenant acknowledged getting this Notice but did not have the exact date. The Tenant applied to cancel this notice on October 6, 2017. Both parties agree that the Tenant has not paid any rent for October or November of 2017.

Analysis

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

I turn to the first 10 Day Notice, which the Landlord stated she posted to Tenant's door on September 8, 2017. Since the Tenant was not sure exactly when she received this notice, I turn to sections 88 and 90 of the *Act*, which states that documents served in this manner are deemed to be received 3 days later. I find the tenant is deemed to have received the first 10 Day Notice on September 11, 2017.

In this case, the Tenant paid the outstanding rent in full on September 15, 2017, which was within the 5 days permitted under the *Act*. As such, I find the first 10 day Notice has no effect.

The second 10 Day Notice was posted to the Tenant's door on October 2, 2017, for \$1,100.00 in unpaid rent for the month of October 2017. Although the Tenant applied to cancel this 10 Day Notice within the 5 days permitted under the *Act*, she has not presented any evidence at this hearing to show that she had a right under the *Act* to withhold rent. Further, the consistent evidence before me is that the Tenant has not paid any rent for October or November of 2017. Having found the Tenant had no right to withhold rent, I find I must dismiss the Tenant's application and the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Conclusion

The Tenant's application for dispute resolution is dismissed.

The landlord is granted 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.

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: November 21, 2017

Residential Tenancy Branch