



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 tenant's application pursuant to the *Residential Tenancy Act* ("Act") to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present I confirmed service of materials. The tenant confirmed receipt of the landlord's 10 Day Notice and evidence. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. I find that the parties were served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed on the following evidence. This month-to-month tenancy began in August, 2014. The monthly rent is \$1,234.80 payable on the first of each month. The tenant only paid \$800.00 towards rent for November, 2017 on November 2, 2017.

The landlord issued a 10-Day Notice on November 2, 2017 when they collected the partial rent payment from the tenant. The tenant confirmed that he has not yet paid the arrear of \$434.80 arising from the November, 2017 rent. The parties testified that the tenant has made full payment of \$1,234.80 for the months of December, 2017 and

January, 2018. The landlord said that payment was accepted for use and occupancy only and receipts were issued clearly stating that fact. The landlord submitted into written evidence copies of the receipts.

The tenant testified that the landlord did not cooperate with a request for information from the provincial government which would have provided funds to pay the rental arrear. The tenant said that the landlord gave false information to the government resulting in the tenant being denied emergency funds.

Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant received the 10 Day Notice on November 2, 2017, and applied within five days of receipt on November 6, 2017. Accordingly, the tenant complied with the five day limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The parties gave testimony that the tenant failed to pay the full rent of \$1, 234.80 for November, 2017, only making payment of \$800.00.

I find that the landlord accepted the rent payment for December and January for use and occupancy only and the tenancy was not reinstated. The tenant testified about applying to the provincial government for funds which he intended to use for the rental arrears but I find this information has no bearing on the finding that the tenant failed to pay the full rent. The tenant bears the responsibility to pay the full amount of rent by the date agreed upon in the tenancy agreement. The landlord bears no responsibility to accommodate the tenant's application for government subsidies or provide collaborating evidence. Even if the landlord did not cooperate with the tenant's application for emergency funds I do not find that would be considered as the landlord waiving their right to rental payment.

I find that the tenant was obligated to pay the monthly rent in the full amount of \$1,234.80. I accept the undisputed evidence before me that the tenant failed to pay the full rent due. Accordingly, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed 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: January 24, 2018

Residential Tenancy Branch