



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, FF

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the 10 day Notice to End Tenancy dated December 18, 2017.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on December 18, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on or about December 21, 2017. In respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated December 18, 2017?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on November 16, 2016. The tenancy agreement provided that the tenant(s) would pay rent of \$420 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$210 at the start of the tenancy.

The landlord testified the Tenant began to experience financial difficulties and was late paying rent starting in the spring of 2017. The tenant has failed to make the following rent payments:

- \$420 is owed for June 2017
- \$250 is owed for July 2017

- \$420 is owed for September 2017
- \$420 is owed for October 2017.

In addition the tenant failed to make the payment for February 2018 and a further \$420 is owed.

On October 1, 2017 the landlord served a one month Notice to End Tenancy that alleged the tenant was repeated late paying the rent. A hearing was held on December 15, 2017. The arbitrator ordered that the one month Notice to End Tenancy be cancelled as the landlord failed to put the effective date of the notice. The decision further states that "It is important to note that I have made no finding as to whether the landlord has a basis under the Act for ending the tenancy. The landlord remains at liberty to re-issue a Notice to End Tenancy should the landlord decide to pursue eviction."

The rent remains unpaid. The tenant testified the landlord agreed to accept late payments. Further, she has been unable to find alternative accommodation because of the cost she incurred in applying to have the Notice(s) set aside. She further testified the problems arose because of a verbal altercation she was in with the landlord's wife. She further stated the landlord does not give receipts.

The landlord disputes the testimony of the Tenant. He testified initially he was prepared to work with the Tenant. However, as the non-payment of rent continued the situation became untenable.

Analysis:

Section 26(1) and (2) of the Residential Tenancy Act provides as follows:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.
- (2) A landlord must provide a tenant with a receipt for rent paid in cash.

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy for the following reasons:

- I determined the tenant failed to pay the rent and the sum of \$1510 was owed when the 10 day Notice to End Tenancy was served.

- The tenant failed to pay the arrears within the 5 days that would void the Notice. The sum of \$1510 remains owing.
- The landlord used the approved government form.
- I do not accept the submission of the tenant that the order of the arbitrator on December 15, 2017 prevented the landlord from serving the 10 day Notice. The decision to cancel the one month notice was based on the failure of the landlord to properly fill out the form. The decision specifically provides that the landlord retains the right to re-issue a Notice should the landlord wish to take steps to end the tenancy.
- The tenant failed to prove the landlord agreed to allow the tenant to continue to live there and not pay rent.
- Section 26 of the Act provides that a tenant must pay the rent when due even if the landlord has failed to do what he is supposed to do under the Act.

As a result I ordered that the Application of the Tenant to cancel the 10 day Notice to End Tenancy be dismissed. The tenancy shall come to an end. I also dismissed the application to recover the cost of the filing fee.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession on 2 days notice

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

This decision is final and binding on the parties.

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 07, 2018

Residential Tenancy Branch