



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR

Introduction:

Both parties and a witness attended the hearing and gave sworn testimony. Both parties agreed the tenant was served with a 10 Day Notice to End the Tenancy for non-payment of rent dated March 19, 2018 to be effective March 29, 2018 by posting it on his door. The tenant said they served the landlord with their Application for Dispute dated March 21, 2018 personally and with an Amendment dated April 12, 2018 personally on April 12, 2018. The landlord agreed they received the tenant's documents but requests the Amendment not be considered as it was served too late for the landlord to have an opportunity to respond. I find the Notice to End Tenancy and the Application were served legally pursuant to sections 88 and 89 of the Act. However, I find the Amendment was not served in time pursuant to Rule 2.5 of the Residential Tenancy Branch Rules of Procedure so I decline to consider it in the hearing. The tenant said he will likely reapply to have those issues heard.

The tenant applies pursuant to section 46 of *The Residential Tenancy Act* (the Act) to cancel the Notice to End Tenancy.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The property is described as a country property on which the landlord resides and rents a trailer on another part of the property to the tenant. The tenancy began on November 12, 2017 on a fixed term to October 31, 2018; rent is \$990 plus hydro. A security deposit of \$495 was requested but the landlord said it was never paid; the tenant said his father paid that. The landlord testified that the tenant paid rent from November 15 to December 15, 2017 (\$990) but failed to pay the rest of the rent for December and never paid the security deposit. The hydro was not paid either. The tenant has not paid the outstanding amounts stated on the Notice to

End Tenancy and has not paid rent for April 2018 either. She said this was a furnished unit rented to a tenant from a half way house as she wanted to help him. She said the home has been trashed.

The tenant contended the Ministry had paid \$325 for the half month owing and his father had paid the security deposit. (However, half of one month's rent is \$495). In evidence he provided a receipt for November 15 to December 15, 2017 for \$990 but no other receipts are in evidence. The landlord provided a tenant ledger showing amounts owed and paid. It shows \$325 was paid for the remainder of November rent, leaving a balance owing of \$170 for that half month. In the hearing, this was clarified as owed for the half of the month in December 2017. It shows \$495 damage deposit owing and hydro of \$489.90 owing from November 15, 2017 to February 1, 2018. The tenant said they have already vacated the home because their hydro was cut off and the landlord re-rented the home. The landlord said the home is vacant; she did not re-rent and did not cut off hydro. The tenants said they were fearful and mentioned some episode with a woman and a car.

On the basis of the documentary and solemnly sworn evidence a decision has been reached.

Analysis:

The Notice to End a Residential Tenancy is based on non-payment of rent. According to section 46 of the Act, utilities if unpaid are classified as part of rent unpaid. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. Although the tenant disputed the Notice in time, and he may have a potential monetary claim against the landlord, I find section 26 of the Act requires rent be paid on time whether or not the landlord fulfills their obligations under the Act.

Based on the oral testimony and the landlord's ledger, I find the tenant owes \$495 for security deposit and \$170 for unpaid rent to the end of December 2017 (total \$665). I also find he has unpaid utilities. I have therefore dismissed his application to cancel the Notice to End the Tenancy. Section 55(1) (a) provides that the arbitrator must grant an order of possession of the rental unit at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. I grant the landlord an Order for Possession effective two days from service.

Conclusion:

I grant the landlord an Order for Possession effective two days from service. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement. I dismiss the tenant's application; his filing fee was waived.

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 18, 2018

Residential Tenancy Branch