



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* (the "Act") for cancellation of 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 their sworn testimony, to make submissions, and to call witnesses. The landlord was assisted by their property manager. The co-tenant DD (the "tenant") primarily represented both co-tenants.

As the parties were both present service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution dated September 10, 2018 and their evidence. The tenants confirmed receipt of the landlord's 10 Day Notice dated September 6, 2018 and the evidence. Based on the undisputed evidence of the parties I find that they were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

This periodic tenancy began in April, 2015. The monthly rent is payable on the first of each month. The landlords testified that the rent is \$852.00 while the tenants said they believed it to be \$851.00.

On September 6, 2018 there was an arrear of \$652.00 and the landlords issued the 10 Day Notice to End Tenancy for that amount. The tenants made a payment of \$300.00 on September 7, 2018 and a payment of \$200.00 on September 10, 2018. The landlord issued a receipt for each of the payments indicating they were accepted for "use and occupancy only". Copies of the receipts were submitted into documentary evidence.

The tenants testified that they paid the remaining arrears by September 25, 2018 and have paid the rent for October, 2018 on September 26, 2018. The landlord confirmed that as of the date of the hearing, October 5, 2018 the rent has been paid in full.

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 September 6, 2018. They paid \$300.00 on September 7, 2018 and \$200.00 on September 10, 2018. Therefore, as of September 11, 2018, five days after being served with the 10 Day Notice the parties confirm there remained an arrear of \$152.00. The tenant testified that the full amount was paid on September 25, 2018.

The landlord indicated on all of the receipts issued after the 10 Day Notice that payment was accepted for use and occupancy only and did not reinstate the tenancy.

I accept the parties' evidence that the full rent due was not paid within the 5 days of service of the 10 Day Notice. Accordingly, I dismiss the tenant's application.

Section 55 of the *Act* provides that:

- 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.

I have dismissed the tenant's application, and I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end. Therefore I find that the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants 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: October 5, 2018

Residential Tenancy Branch