



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 2, 2018, and to recover the cost of the filing fee. The matter was set for a conference call.

Both the Tenant, the Landlord and the Landlord’s counsel attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issues to be Decided

- Should the 10-Day Notice, dated September 2, 2018, be cancelled?
- If not, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to the return of the filing fee?

Background and Evidence

Both parties agreed that the tenancy began on May 1, 2017, and that rent in the amount of \$650.00 is to be paid by the first day of each month. The parties also agreed that the Tenant paid the Landlord a \$325.00 security deposit at the outset of this tenancy.

The Landlord testified that the Notice was served on the Tenant by posting it to the door of the rental unit on September 2, 2018, with an outstanding rent amount of \$1,950.00 at the time of service.

The Landlord also testified that the Tenant has not paid the outstanding rent as indicated on the Notice, nor has she paid the rent for October 2018. The Landlord is requesting that the Notice is enforced and that an order of possession is issued.

The Tenant testified that she agrees that she has not paid her rent for July, August, September, and October 2018.

Analysis

Based on the testimony of the Landlord and the Tenant, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted the Notice under section 46(5).

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect,
- or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I find that the Tenant was deemed to have received the 10-Day notice on September 5, 2018, three days after the Notice was attached to the front door of the rental unit, pursuant to section 90 of the *Act*.

I accept the testimony of both parties that the Tenant has not paid the outstanding rent as stated on the Notice. I find that the Tenant has not provided any evidence to show that she had permission from the Landlord to withhold the rent, or an order from this office allowing her to withhold any portion of the rent, or that she had to conduct out of pocket emergency repairs to the rental unit. Therefore, I find that the Tenant is in breach of section 26 of the Act by not paying the rent in accordance with the tenancy agreement and I dismiss the Tenant's application to cancel the Notice.

I have reviewed the Notice to End Tenancy, and I find the Notice complies with section 52 of the Act. As I have dismissed the Tenant's application, pursuant to section 55 of the Act, I must grant the Landlords an order of possession to the rental unit.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenants.

As the Tenant has not been successful in her application to cancel the notice, I find the Tenant is not entitled to recover the filing fee for this hearing.

Conclusion

I grant an **Order of Possession** to the Landlord, effective **two days** after service of this Order on the Tenant. Should the Tenant 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 25, 2018

Residential Tenancy Branch