



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, DRI, ERP, MNDC,

Introduction

On September 14, 2018 the Tenant made an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 10, 2018. The Tenant also applied for a monetary order for money owed or compensation for damage or loss; for the Landlord to comply with the Act, regulation or tenancy agreement, for a repair order and to dispute rent increase.

The matter was set for a conference call hearing at 11:00 a.m. on this date. The Tenant attended the teleconference hearing; however, the Landlord did not. The phone line remained open and was monitored for ten minutes and the Landlord did not call into the hearing during this time.

Preliminary and Procedural Matters

The Tenant testified that the parties are currently at the BC Supreme Court dealing with a previous Decision. The Tenant testified that the application for Judicial Review was reset by consent because the Landlord's agent is having difficulty contacting the owner of the property who resides in another country. The Tenant testified that the matter before the Court is still outstanding.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. As the primary issue to decide is whether or not the tenancy is ending based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice"), I have dismissed the Tenant's other claims with leave to reapply.

Issue to be Decided

- Should the 10 Day Notice dated September 10, 2018, be set aside?

Background and Evidence

The Tenant received a 10 Day Notice dated September 10, 2018, and filed to dispute the Notice on September 14, 2018.

The Tenant testified that she served the Notice of Dispute Resolution Proceeding documents on the Landlord's agent in person on September 21, 2018. The Tenant testified that she provided the documents to the business address the Landlord's agent provided her for service of documents.

I find that the Landlord was served with the Notice of Dispute Resolution Hearing documents in accordance with the Act, and failed to attend the hearing to pursue the validity of the 10 Day Notice.

Analysis

In the matter before me, the Landlord has the onus of proof to prove that the 10 Day Notice is valid. I find that the Landlord was properly served with the Notice of Dispute Resolution Proceeding and failed to attend the hearing to prove the allegation within the 10 Day Notice.

Therefore, as the Landlord did not attend the hearing by 11:10 AM, I cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 10, 2018.

I order the tenancy to continue until ended in accordance with the Act; and pending the outcome of the Decision at Judicial Review.

Conclusion

The Tenants application to cancel the 10 Day Notice dated September 10, 2018, is successful. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 10, 2018, is set aside.

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 29, 2018

Residential Tenancy Branch