



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNR CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46 (the 10 Day Notice);
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence.

Issues

Should the landlord's 10 Day Notice and/or One Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on July 1, 2016. Effective July 1, 2018 the monthly rent was \$915.00 payable on the 1st day of each month.

The parties agreed that the tenant received the 10 Day Notice in person on July 13, 2018. The outstanding rent amount as per the 10 Day Notice was \$450.00 which was due on July 1, 2018. The tenant paid the outstanding \$450.00 on July 21, 2018 and was issued a receipt for use and occupancy only. The landlord acknowledged that the tenant has since paid rent for August and September 2018 in full.

The tenant acknowledged the outstanding rent was not paid within 5 days after receiving the 10 Day Notice. The tenant testified that she had to first borrow money to pay the outstanding amount.

Analysis

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Section 26 of the Act requires that 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.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application must be dismissed as the tenant acknowledged rent was not paid within 5 days after receiving the 10 Day Notice nor did the tenant have a right under this Act to deduct all or a portion of the rent.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act. As the landlord has received payment for September 2018, for use and occupancy only, the effective date of the order of possession is September 30, 2018.

As the tenancy has ended pursuant to the 10 Day Notice, the tenant's application to dispute the One Month Notice is moot and I make no findings on the merits of that Notice.

Conclusion

I grant an Order of Possession to the landlord effective **1:00 p.m. on September 30, 2018**. Should the tenant(s) 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: September 11, 2018

Residential Tenancy Branch