



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRITISH COLUMBIA KINSMEN HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing was scheduled in response to 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;

Initially only the landlord's two agents (collectively the "landlord") attended the hearing however approximately 12 minutes into the hearing, the tenant joined the teleconference. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords confirmed they were agents of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord confirmed receipt of the tenant's application and evidence. The landlord testified that she provided one piece of documentary evidence in the form of a letter for this hearing and it was served to the tenant in person on December 10, 2018. The tenant denied receipt of this evidence. As such, I read the letter to the tenant during the hearing. In the letter dated December 11, 2018, the landlord wrote;

The Landlord will not be submitting any evidence to this file as the Tenant did pay her rent for Nov. 1, 2018 on Nov. 5th 2018.

The tenant has a history of late rent and NSF cheques for rent, however the notice for this dispute has not been enforced.

[Reproduced as written]

Issue(s) to be Decided

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

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on September 1, 2017 on a month to month basis. Subsidized rent in the amount of \$561.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$600.00 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

The tenant confirmed personal receipt of the landlord's 10 Day Notice on November 5, 2018. The notice indicates an effective move-out-date of November 18, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the landlord's 10 Day Notice on November 5, 2018, the day it was personally served.

Since the 10 Day Notice was issued to the tenant the landlord testified that she has received a rent payment in the amount of \$560.00 on November 13, 2018. The landlord did not issue a receipt for "use and occupancy only" for this payment.

The tenant contended that she placed a rent cheque in the office mailbox on November 1, 2018 however after receiving the 10 Day Notice she placed a stop payment on this cheque and issued a new cheque on November 5, 2018. She testified that again, she placed this cheque in the office mailbox; however it seems to her that the landlord did not cash this cheque until November 13, 2018.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within five days, pay rent in full or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant pays the overdue rent within five days, the notice has no effect.

The documentary evidence and the testimony of the tenant have persuaded me on the balance of probabilities that the tenant paid her rent within five days of receipt of the 10 Day Notice. The tenant was forthright, consistent and did not waiver in her testimony.

The landlord's evidence, on the other hand was not credible. The landlord's testimony was incongruent with the letter she wrote which indicates rent was paid within five days. Based on the reasons above, I find the tenant paid the overdue rent within five days and as such the notice has no effect. The tenant's application to cancel the notice is upheld.

Conclusion

The tenant's application to cancel the 10 Day Notice is upheld. The tenancy continues until it is ended in accordance with the *Act*.

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: December 20, 2018

Residential Tenancy Branch