



Dispute Resolution Services

Page: 1

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 were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant testified that she had served the landlord with her application package by registered mail. In accordance with section 89 of the *Act*, I find the landlord was deemed served with the Application. The tenant confirmed receipt of the landlord's evidence. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with copies of the landlord's evidence.

The tenant confirmed receipt of the 10 Day Notice dated November 13, 2018, which was posted to the tenant's door on November 15, 2018. In accordance with sections 88 and 90 of the *Act*, I find the tenants deemed served with the 10 Day Notice on November 18, 2018, three days after posting.

Issues 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

This month-to-month tenancy began on November 1, 2018. Rent is currently set at \$1,400.00 per month, payable on the first of the month. The written tenancy agreement indicates that a security deposit and pet damage deposit in the amount of \$700.00 each

was due, but was not paid by the tenant. The tenant currently still resides at the rental home.

The landlord issued the 10 Day Notice on November 15, 2018 as the tenant failed to pay the November 2018 rent. The tenant does not dispute that she did not pay rent on November 1, 2018 or within 5 days of receiving the 10 Day Notice.

The tenant testified in the hearing that she was on social assistance, and due to financial issues was not able to make payment until November 23, 2018. She testified that the landlord refused her payment on that date. The landlord testified in the hearing that the tenant did attempt to make payment on November 23, 2018, but the payment was not the full amount that the tenant owed. The landlord testified that the tenant's social assistance only covered \$540.00 of the monthly rent, and therefore did not satisfy the terms of this tenancy.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

- 26** (1) 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.

Section 46(4) of the *Act* provides that "within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect". The tenant was deemed to have received the 10 Day Notice on November 18, 2018, and the last day to pay the full amount was November 23, 2018, the date the tenant testified that she had attempted to make partial payment to the landlord. I accept the undisputed testimony of the landlord that although the tenant did attempt to pay rent within the 5 days allowable under the *Act*, the amount did not satisfy the full amount due to the landlord. I find that the tenant failed to pay the outstanding rent in full, and therefore I dismiss the tenant's application to cancel the 10 Day Notice.

Section 55(1) of the *Act* reads as follows:

- 55** (1) 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 find that the 10 Day Notice issued by the landlord is valid, and complies with section 52 of the *Act*.

I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I dismiss the tenant's application to cancel the landlord's 10 Day Notice. I find that the landlord's 1 Month Notice is valid and effective as of November 28, 2018. As the tenant has not moved out, I, therefore, grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant and any occupant 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: January 4, 2019

Residential Tenancy Branch