



Dispute Resolution Services

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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 "**Notice**") pursuant to section 46;

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served the notice of dispute resolution and supporting evidence via registered mail on January 15, 2019. The tenant provided a Canada Post registered mail tracking number for this package, which is reproduced on the cover of this decision. The landlord confirmed receipt of these documents. I find that the landlord was deemed served with this package on January 20, 2019, five days after the tenant mailed it, in accordance with sections 89 and 90 of the Act.

The landlord testified that they posted their evidence package on the door of the tenant's rental unit on February 19, 2019. The tenant confirmed receipt of the evidence. I find that the tenant was deemed served with this package on February 22, 2019, three days after the landlord posted it, in accordance with sections 88 and 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The landlord and the tenant entered into a month to month tenancy agreement starting July 31, 2016. Monthly rent is \$1,400.00. The tenant paid a \$700.00 security deposit to the landlord, which the landlord retains.

On January 11, 2019, the landlord served the tenant with a copy of the Notice by posting it on the rental unit door. It set out an effective date of January 25, 2019. The Notice stated that \$200.00 in rent was owed as of January 1, 2018, that is, almost one year prior to the Notice being issued.

The landlord testified that, in January 2018, the tenant only paid \$1,200.00 monthly rent. The landlord testified that, since then, they have been trying to recover this amount from the tenant (and that the tenant has promised to pay it), but have been unsuccessful.

The landlord submitted into evidence a series of text messages with the tenant wherein the tenant appears to state that she will pay the landlord some amount of money on multiple occasions:

- February 3, 2018
 - "I will have your \$200.00 in the bank tomorrow morning."
- February 13, 2018
 - "My payday is on the 19th I will I will put the rest in there on the 19th. 250" [sic]
- May 11, 2018
 - "I will be in [redacted] tomorrow at 3pm can we meet at McDonald's so I can pay you \$300"
- Date unspecified
 - "I'll go to the ministry tomorrow morning I will give them your phone number and then can you tell them that I still owe 250 for rent [...]"
- June 4, 2018
 - Put 700 in your account today will be putting 200 in your account on Wednesday then 50 on the 15th

The landlord testified that these amounts all related to January's unpaid rent, and that the reason for the increase from \$200.00 to \$250.00 was due to a late payment fee (the claim for which the landlord appears now to have abandoned). No explanation was

offered as to why the tenant offered to pay \$300.00 on May 11, 2018. The landlord testified that the tenant never made payments as indicated in the text messages.

The tenant testified that:

- she has always paid her rent on time and in full;
- the ministry (she did not specify which one) pays half of her rent, and she pays the other half;
- she pays her half of the rent by going to the landlord's bank with cash, and depositing the funds directly in the landlord's bank account.
- she has asked the landlord for proof that she owes the rent (in the form of bank statements for January 2018), but that the landlord has failed to provide any.

Analysis

Section 90 of the Act provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the Act, I find that the tenant is deemed to have received the Notice on January 14, 2018, three days after its posting.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the landlord must satisfy me that the tenant has failed to pay a portion of the January 2018 rent. The landlord has provided oral evidence that the tenant has failed to do so. The landlord relies on the text message exchange as confirmation of this.

The tenant, however, denies that she agreed to repay \$200.00 unconditionally, and instead testifies that she requires proof that funds are owed before she does this, and that the landlord has failed to provide that proof.

On this basis, the tenant argues, the Notice should be cancelled.

Upon review of the text message conversation, I find that the tenant has not once asked for confirmation by way of bank records that the \$200.00 is owed. I do not find this fact consistent with the tenant's testimony that she requested proof that the funds were owed. Indeed on February 3, 2018, she seemed to acknowledge that \$200.00 was owed. I do not find it likely that (only one month making a rent payment) the tenant would not know if she paid rent in full or not.

Similarly, I do not find it reasonable for the tenant to have replied as she did on February 3, 2018 if she believed she paid the rent in full. A reasonable person would have stated that they did not believe any rent is owed, if they believed they had paid the rent in full. The tenant's message on February 3, 2018 is consistent with that of someone acknowledges that they have not yet paid the full amount of rent owed.

On consideration of the testimony of the parties and the documents entered into evidence, I find that, on a balance of probabilities, the tenant failed to pay \$200.00 of the rent owed for January 2018. I do not require that the landlord produce copies of his bank records to prove that this amount is owed. Rather, the tenant's statements to the landlord in the months after the rent was owed are consistent with those of someone who acknowledges they underpaid a month's rent.

On this basis I find that the Notice was validly issued, and that the tenant owes the landlord \$200.00 in rent for January 2018.

Section 55 of the Act states:

- 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.

Accordingly, I grant the landlord an order of possession against the tenant effective two days after service of this order by the landlord on the tenant.

I decline to make any order regarding the repayment of the \$200.00, as no application for repayment is before me.

Conclusion

The tenant's application is dismissed, without leave to reapply.

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 in, 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: February 27, 2019

Residential Tenancy Branch