



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR

Introduction:

Both parties attended the hearing and gave sworn testimony. The landlord said they served the tenant with a 10 Day Notice to End the Tenancy for non-payment of rent dated May 22, 2019 to be effective April 6, 2019 by registered mail. The tenant said she received it by regular mail. The tenant said they served the landlord with their Application for Dispute dated March 29, 2019 by registered mail and the landlord agreed they received it. I find the documents were legally served pursuant to sections 88 and 89 of the Act; I note that a Notice to End Tenancy may be served by either regular or registered mail pursuant to section 88 pursuant to section 88 and I find the Applications were served by registered mail as this is supported by the evidence. The tenant applies pursuant to section 46 of *The Residential Tenancy Act* (the Act) to cancel the Notice to End Tenancy and the landlord applies for an Order of Possession and a Monetary Order for unpaid rent.

The landlord pointed out that there was a male landlord who signed the tenancy agreement and he should be added to the dispute documents. I included the male landlord's name in the Decision and Orders as requested.

Issues: Is the tenant entitled to any relief? Or is the landlord entitled to an Order of Possession and a monetary order for unpaid rent?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. This was a very contentious hearing with the tenant alleging she paid rent and the landlord submitting she did not pay as she said. However, it is undisputed that the tenancy commenced on March 3, 2019 with possession to the tenant on March 10, 2019 as the landlord had just bought the home. The rent was \$1241.04 for the first month due to late possession and \$1750 per month thereafter. A security deposit of \$875 was to be paid. The landlord and her son testified

that the tenant failed to pay the rent for March or the full security deposit and was served with a Notice to End the Tenancy on March 22, 2019. They testified she subsequently paid \$543 by e transfer on March 5, 2019 and paid \$1500 on April 19, 2019 with a cheque backdated to April 8, 2019. The landlord received these payments with a notification to her that they were “for use and occupancy only”.

The tenant testified she paid the rent in full by e transfer. She said she first paid the security deposit of \$875 by e transfer but the landlord said they did not receive it. She then sent an e transfer for \$543 (partial payment) which they said they did receive. She said the bank said her first payment was received by the landlord into their account so she was reluctant to send more money by e transfer but she did send the rent for March and her screen and online said it was received and she showed this to the landlord. She said she could not put this in evidence as her account was shut down as the bank is doing a fraud investigation. The landlord's son said they were shown the screen shot so they gave the tenant more time to pay the rent. However, she only paid \$1500 on April 19, 2019 with a cheque backdated to April 8, 2019 when he went to collect it and look at a broken step. The tenant had contended she had problems getting mail because the steps were broken but the landlord said the mailbox is beside the steps and the post office verified there had been no postal disruption.

The landlord meanwhile submitted a Direct Request for an Order of Possession and a monetary order for unpaid rent. Their Application was joined to this Application as the tenant had disputed the Notice to End Tenancy. The landlords uploaded all their evidence into their file. I examined their evidence of a cheque dated March 13, 2019 for \$1574.00 from the tenant that was returned unpaid by the tenant's bank; apparently it was on a closed account. I examined the copy of the landlord's bank account statements. Various e transfers are shown from other tenants but none from this tenant. Emails were also in evidence showing the landlord's efforts to meet the tenant to collect the rent but they were not successful until April 19, 2019 when she gave him partial payment in a cheque back dated to April 8, 2019. Although the tenant said she had problems uploading her evidence in time, I find she was able to upload a request for a fee waiver on March 29, 2019 with her application.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis:

The Notice to End a Residential Tenancy is based on non-payment of rent. The *Residential Tenancy Act* permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. Although the tenant disputed the Notice in time, I find the weight of the evidence is that she did not pay the full security deposit or the full rent for March or April, 2019. I find the landlord also notified the tenant that the partial payments she made of \$543 and \$1500 were accepted “for use and occupancy only” and thus did not reinstate the tenancy. I find the landlord’s evidence(for example the returned cheque for March rent and their bank account statements showing no e transfers were received from this tenant), supports their credibility and although the tenant said she could prove she paid rent, she provided no documents to do this. I find the emails between the parties show the landlord was having difficulty in meeting the tenant to collect the outstanding rent, although they persistently pursued this. I therefore dismiss her application to cancel the Notice to End the Tenancy. Section 55(1) (a) provides that the arbitrator must grant an order of possession of the rental unit at a hearing where an arbitrator has dismissed the tenant’s application pursuant to section 46 and has upheld the Notice. I find the Notice to End Tenancy conforms to section 52 of the Act and was legally served. I grant the landlord an Order for Possession.

Pursuant to section 46 and 67, I also grant the landlord a monetary order for the unpaid rent as calculated below and recovery of their filing fee.

Conclusion:

I grant the landlord an Order for Possession effective two days from service. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement. I dismiss the tenant’s application. Her filing fee was waived.

I grant the landlord a monetary order for the outstanding rent as calculated below:

Security deposit	875.00
Rent March 2019	1241.94
Rent April 2019	1750.00
Filing fee	100.00
Less payments received: 543 by e transfer & 1500 by cheque dated April 8,	-2043.00
Total Monetary Order to Landlord	1923.94

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: April 25, 2019

Residential Tenancy Branch