



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to cancel a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated March 18, 2019 ("10 Day Notice") and to recover the cost of the filing fee.

On May 9, 2019 and May 14, 2019, two Interim Decisions were issued regarding this matter, which should be read in conjunction with this decision.

On May 23, 2019, the hearing reconvened and the tenant and the landlord attended the teleconference hearing. The hearing process was explained to the parties and an opportunity to ask questions was provided to the parties. I have considered only the documentary evidence that was served in accordance with the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). In addition, only evidence relevant to the issues and my findings below have been described in this decision.

Neither party raised any concerns regarding the service of documentary evidence. Both parties confirmed that they had been served with documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing.

Preliminary and Procedural Matters

At the outset of the hearing, the parties were advised that I was adding the unit number to the rental unit address, which I have done pursuant to section 64(3) of the *Act*.

In addition, the parties confirmed their email addresses at the outset of the hearing. The parties were advised that the decision would be emailed to the parties. In addition, any related orders will be emailed to the appropriate party for service on the other party.

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on March 29, 2018. Monthly rent is \$2,700.00 and is due on the first day of each month.

The tenant confirmed receiving the 10 Day Notice dated March 18, 2019. The tenant disputed the 10 Day Notice within the required 5 day timelines under section 46 of the *Act* by filing to dispute the 10 Day Notice on March 19, 2019. The 10 Day Notice states that \$7,604.00 in unpaid rent was due on March 1, 2019. The landlord clarified during the hearing that the amount of \$7,604.00 did not include the rent due for March 2019.

Although the tenant testified that she paid rent of \$2,000.00 on either April 30, 2019 or April 31, 2019, and another \$700.00 on May 1, 2019, the landlord stated that that was late rent for March 2019. The tenant confirmed that she did not submit evidence that she paid the full amount owing as indicated on the 10 Day Notice within 5 days of being served with the 10 Day Notice or any time thereafter.

In fact, the tenant made an offer to the landlord to continue the tenancy if the tenant agreed to repay over \$7,000.00 owing in unpaid rent, plus fines related to the tenant operating an AirBNB out of the rental unit. The landlord did not accept the tenant's offer as the landlord stated that according to the AirBNB website, the tenant had the rental unit booked until the end of September 2019.

The tenant wrote in her evidence that she does not feel that she would be responsible for her co-tenant's portion of rent, that the co-tenant failed to pay by vacating the rental unit without notice.

The tenant continues to occupy the rental unit. The landlord testified that no money for May 2019 has been paid by the tenant for use and occupancy. The tenant provided no documentary evidence to support that any money has been paid for May 2019 use and occupancy. The landlord is seeking an order of possession and does not wish for the tenancy to continue.

The landlord asked about the monetary amount owing, and was advised that the landlord has not made an application for a monetary claim. The landlord is at liberty to apply for such in the future. This decision does not extend any applicable timelines under the *Act*.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice – The landlord issued a 10 Day Notice dated March 18, 2019, which the tenant disputed the next day on March 19, 2019. Although the tenant disputed the 10 Day Notice on time by filing an application on March 19, 2019, I find the tenant has failed to provide sufficient evidence that they had a right to withhold any amount of rent under the *Act* or paid the full amount of rent arrears within 5 days of being served the 10 Day Notice. Therefore, I find the 10 Day Notice to be valid and **I dismiss** the tenant's application to cancel the 10 Day Notice. I uphold the 10 Day Notice issued by the landlord, which had an effective vacancy date of March 31, 2019, as it is valid.

I find the tenancy ended on March 31, 2019. Under the *Act*, co-tenants are jointly responsible for the total amount of rent owing under the tenancy agreement. Section 55 of the *Act* applies and states:

Order of possession for the landlord

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.

[Emphasis added]

Pursuant to section 55 of the *Act*, and taking into account that I find the 10 Day Notice complies with section 52 of the *Act*, I must grant the landlord an order of possession

once I have dismissed the tenant's application to dispute the 10 Day Notice or have upheld the 10 Day Notice. Therefore, I grant the landlord an order of possession for unpaid rent **effective two (2) days** after service on the tenants.

I do not grant the filing fee as a result.

Conclusion

The tenant's application fails and is dismissed in full without leave to reapply, due to insufficient evidence.

The 10 Day Notice is upheld. The tenancy ended on March 31, 2019.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The decision and order of possession will be emailed to the landlord and the decision will be sent by email to the tenant.

The filing fee is not granted.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 23, 2019

Residential Tenancy Branch