



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated March 11, 2019 ("10 Day Notice").

The Landlord appeared at the teleconference hearing and gave affirmed testimony, but no one attended for the Tenant. The teleconference hearing was open for 14 minutes, but no one called in on the Tenant's behalf. The Landlord said he served the Tenant with his documentary evidence in reply to the Tenant's Application via registered mail on March 22, 2019, and he provided a Canada Post tracking number for this.

I explained the hearing process to the Landlord and gave him an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide his evidence orally and to ask questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

The Tenant's email address was in her Application. The Landlord provided his email address at the outset of the hearing and confirmed his understanding that the decision would be emailed to both Parties, with any orders emailed to the appropriate Party.

On the Application, the Tenant spelled the Landlord's name differently than how the Landlord spelled his name to me in the hearing. As a result, I have used the correct spelling of the Landlord's name in this decision letter.

Issue(s) to be Decided

- Is the 10 Day Notice valid or should it be cancelled?

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord confirmed the evidence in the tenancy agreement, which indicates that the tenancy began on October 1, 2018, with a monthly rent of \$2,000.00 due on the first day of each month. The Landlord said the Tenant paid a security deposit of \$1,000.00 and no pet damage deposit.

The Landlord said he issued the 10 Day Notice, because the Tenant owed him \$2,500.00 in unpaid rent at that time, which he said included \$500.00 owing for February 2019, and \$2,000.00 owing for March 2019. The Landlord said he served the Tenant with the 10 Day Notice via registered mail on March 11, 2019, and he provided a Canada Post tracking number for this package.

In the hearing, the Landlord said that the Tenant did not pay her rent for April or May 2019, but that she made the following payments toward her unpaid rent:

April 17 → \$ 600.00

April 30 → \$1,500.00

In the hearing, the Landlord said:

A few days ago she texted me wanting to pay \$1,500.00 every two weeks, and I said that would be good if you can pay it, but what guarantee do I have? She said today would be the day that she would confirm that she could do this. So that's why she paid \$1,500.00 on April 30. She said she was going to express her interest in doing that today at the hearing.

I'm still short \$4,400.00. She's been late before and I've always tried to accommodate her, and she's managed to catch up, but this time it has been the worst case - over two months now. I have no choice but to get an order of possession; let's go ahead with that.

Analysis

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

. . .

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

The Tenant applied for dispute resolution, but she did not attend the hearing to pursue her claim against the Landlord's evidence.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice on March 16, 2019, five days after it was sent to her by registered mail.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In the hearing, the Landlord said that he was owed \$4,400.00 in unpaid rent as of May 2, 2019.

Based on the above, I find that the amount of rent outstanding listed on the 10 Day Notice of \$2,500.00 is incorrect, as it was based on outstanding rent amount for February and March 2019. However, as there is no monetary claim before me for rent, I must determine whether the 10 Day Notice is valid, not the exact amount of rent outstanding.

The 10 Day Notice was signed, dated, had the rental unit address and the effective vacancy date of March 22, 2019. I find that the effective date is incorrect, as it should have been 10 days after the 10 Day Notice was deemed served on the Tenant; as

noted above, the 10 Day Notice was deemed served on the Tenant on March 16, 2019. Therefore, pursuant to section 53 of the Act, the vacancy effective date is automatically corrected to March 26, 2019. I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenant did not attend the hearing to provide testimony as to why the rent was not paid, and she did not provide any documentary evidence establishing that she had a right under the Act to deduct all or a portion of the \$2,500.00 in rent owed for February and March 2019. Therefore, the Tenant's Application to cancel the 10 Day Notice is dismissed without leave to reapply.

As a result, I find that the Landlord is entitled to an order of possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenant has not paid rent for April or May 2019, the order of possession will be effective two days after service of the order on the Tenant.

Conclusion

The Tenant has not paid rent for more than the last two months, so her Application is dismissed without leave to reapply. Pursuant to section 55 of the Act, I grant the Landlord an order of possession effective **two days after service of this order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this order as soon as possible. Should the Tenant fail to comply with this order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 06, 2019

Residential Tenancy Branch