



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE LAW CENTRE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR MT

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; and
- more time to make an application to cancel the landlord's 10 Day Notice pursuant to section 66.

At the outset of the hearing both parties that SV is the name of the actual tenant, even though this application was filed by her representative TLC. As neither party was opposed, the tenant's application was amended to include the name of the actual tenant SV.

Both parties attended the hearing and 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 landlord confirmed receipt of the tenant's application for dispute resolution hearing and evidence. In accordance with sections 88 and 89 of the Act, I find that the landlord was duly served with the tenant's application and evidence.

The tenant confirmed receipt of the 10 Day Notice, dated July 3, 2019, on July 8, 2019 when the tenant returned to her home. The landlord testified that they had posted the 10 Day Notice on the tenant's door on July 3, 2019. In accordance with section 89 and 90 of the Act, the 10 Day Notice is deemed served 3 days after posting, on July 6, 2019. The effective date of the 10 Day Notice is therefore corrected to July 16, 2019. As the

tenant confirmed receipt of the 10 Day Notice, I find the tenant duly served with the 10 Day Notice on July 8, 2019.

The tenant applied for more time to make this application to cancel the 10 Day Notice. As the tenant filed her application a day within the time period required by the *Act*, on July 9, 2019, 3 days after the Notice is deemed to have been received, the application for more time is not required, and the hearing proceeded to address whether the 10 Day Notice should be cancelled, and whether the landlord is entitled to an Order of Possession.

Preliminary Issue – Landlord’s Evidence

The tenant testified in the hearing that she did not receive the landlord’s evidence for today’s hearing. The landlord testified that as the named tenant on the application, they had served TLC with their evidentiary materials, and not SV.

The tenant requested that the evidence be excluded as both she was not served with the evidence for today’s hearing. In order to proceed with the hearing as scheduled, the landlord agreed to the exclusion of their evidence package, and have the hearing proceed on the basis of their sworn testimony. Accordingly, the landlord’s evidentiary materials were excluded, and the hearing proceeded.

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 15, 2017. The current rent is set at \$1,325.00, payable on the first of the month. The rent is subsidized with the tenant responsible for \$1,187.50 every month.

The landlord issued the 10 Day Notice in July of 2019 as the tenant failed to pay the July 2019 rent. Both parties confirmed that \$3,302.50 in rent for this tenancy remains outstanding, and the tenant had only paid a portion of the outstanding rent for July 2019, for use and occupancy only.

The tenant testified that she was unable to pay the outstanding balance as she was robbed, and did not have the funds to do so. The tenant testified that she had paid what she could.

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”. I accept the undisputed testimony that although the tenant did attempt to pay some of the rent, the amount did not satisfy the full amount due to the landlord, and within the time period required by the *Act*. 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*. As the corrected, effective date of the 10 Day Notice has passed, and the tenant is still residing there, 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. 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: September 10, 2019

Residential Tenancy Branch