



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 0996959 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR, OLC, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (Act) for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") under Sections 46 and 55 of the Act;
2. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement under Section 62(3) of the Act; and,
3. Recovery of the application filing fee under Section 72 of the Act.

The hearing was conducted via teleconference. The Tenant attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference. The Tenant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant testified that she was not recording this dispute resolution hearing.

The Tenant stated the Landlord served the 10 Day Notice on April 6, 2023 by attaching the notice on the Tenant's door. I find the 10 Day Notice was sufficiently served on the Tenant on April 6, 2023 according to Section 71(2)(b) of the Act.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on April 20, 2023 by Canada Post registered mail (NoDRP package). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on April 25, 2023, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's 10 Day Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?
4. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant confirmed that this tenancy began as a fixed term tenancy on October 15, 2021. The fixed term ended on October 31, 2022, then the tenancy continued on a month-to-month basis. Monthly rent is \$3,850.00 payable on the first day of each month. A security deposit of \$1,925.00 and a pet damage deposit of \$1,925.00 were collected at the start of the tenancy and are still held by the Landlord.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$3,850.00 in outstanding rent on April 1, 2023. The effective date of the 10 Day Notice was April 16, 2023.

The Tenant testified that the Landlord told her he found her April 2023 rent cheque and he cashed it on April 11, 2023. The Tenant stated the Landlord cashed her May 2023 rent cheque on May 24, 2023.

The Tenant gives the Landlord six post-dated rent cheques at a time. She asked him if he has lost her cheque, to contact her and she will issue another one. The Tenant said that the Landlord told her there was a misunderstanding with their accountant.

The Tenant said this tenancy has not been without problems. They have attended a dispute resolution hearing before, of which the Tenant was successful.

The Tenant testified that the Landlord has blocked her on WhatsApp, and she was told by the Landlord that email is not an approved form of communicating with the Landlord. The Tenant asks for the Landlord to respect their right to quiet enjoyment of their rental unit.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenant's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The Tenant disputed the Landlord's 10 Day Notice on April 11, 2023 within 5 days after receiving the notice. The Tenant testified that the Landlord later cashed her April 2023 rent cheque on April 11, 2023. I find the 10 Day Notice issued by the Landlord is not valid, and I cancel the notice. The tenancy will continue until ended in accordance with the Act.

The Tenant is entitled to the right of quiet enjoyment of her rental unit under Section 28 of the Act. Section 28(2)(b) of the Act states a tenant is entitled to quiet enjoyment including, but not limited to, rights to freedom from unreasonable disturbance.

The Tenant has kept up her obligations under their tenancy agreement. She has always paid her rent on time, and she issues post-dated cheques to maintain good relations with the Landlord. I understand this tenancy has had past issues but matters such as unpaid rent can be resolved first with communication with the Tenant. I caution the Landlord to respect the Tenant's Section 28 rights. Attending dispute resolution hearings can be stressful, but also seem pointless when the initiator of a matter such as this does not attend.

As the Tenant is successful in her claim, she is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from one month's rent due to the Landlord.

Conclusion

The Tenant's application to cancel the 10 Day Notice is granted.

The Tenant may withhold \$100.00 from one month's rent to recover her application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 30, 2023

Residential Tenancy Branch