

## **Decision**

### **Dispute Codes:**

CNR.

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated May 2, 2012 and effective May 18, 2012. The tenant's application also requested reimbursement by the landlord for the cost of the filing;

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence is whether the landlord's issuance of the Ten-Day Notice to End Tenancy for Unpaid was warranted. The burden of proof is on the landlord/respondent to justify the reason for the Ten-Day Notice.

### **Background and Evidence**

The tenancy began on February 14, 2011 with rent of \$380.00 and a security deposit of \$190.00 was paid. Submitted into evidence by the applicant/tenant in support the application was, a copy of the Ten-Day Notice to End Tenancy dated May 2, 2012. Other evidence from the tenant, included a copy of a receipt from the landlord for \$142.00 dated April 23, 2012. No copy of the tenancy agreement was in evidence.

The landlord testified that the tenant fell into arrears in March 2012 and made some partial payments during April 2012 but still owed \$116.63 at the end of April 2012. The landlord testified that the tenant did not pay the \$380.00 rent owed for the month of May 2012 and that a Ten-Day Notice to End Tenancy was issued on May 2, 2012 demanding the accrued arrears of 496.63.

The landlord testified that the outstanding rent was not paid within five days to cancel the notice and in fact was never paid at all.

The tenant acknowledged receiving the notice but disputed the amounts being claimed by the landlord.

The tenant testified that she made a payment for \$250.00 at the end of April that the landlord did not include in the calculations and the Ministry also sent a cheque to the

landlord for part of the rent. The tenant also testified that she had mistakenly believed that she was entitled to withhold \$75.00 from the rent to reimburse for the cost of a prior application in relation to a hearing held on April 3, 2012 in which the parties had reached a mutual agreement. According to the tenant the arrears should not exceed \$75.00 still outstanding.

Records show that the tenant did not pay any filing fee for the prior application heard on April 3, 2012 and no order was issued stating that she could withhold any amount from her rent.

### Analysis – Notice to End Tenancy

Section 26 of the Act states that rent must be paid 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.

I find that the tenant did not have a valid reason under the Act not to pay the rent. While I make no findings on the actual amount of the arrears, I do accept that the tenant is in arrears for rent in some amount .

Given the testimony of the parties, I find that the tenant did not pay the rent when rent was due and that the tenant did not pay the arrears within 5 days of receiving the Notice to end Tenancy for Unpaid Rent.

Accordingly, I find that must dismiss the tenant's application requesting an order to cancel the Ten-Day Notice.

During the hearing the landlord made a request for an order of possession. Under the provisions of section 55(1) of the Act, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy.

### Conclusion

Based on the testimony and evidence discussed above, I hereby issue an Order of Possession in favour of the landlord effective two days after service to the tenant. The tenant must be served with the order of possession. Should the tenant fail to comply

with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The tenant's application is dismissed without leave to reapply.

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: May 30, 2012.

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Residential Tenancy Branch