



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, LAT

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;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70; and
- an "other" remedy.

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 was represented by his agent. The agent confirmed he had full authority to act on behalf of the landlord. At the hearing, the agent made an oral request for an order of possession if I upheld the 10 Day Notice.

The agent admitted service of all evidence and the dispute resolution package. The agent testified he received the package on 7 July 2015.

Preliminary Issue – Landlord's Address for Service

The address for service set out on the 10 Day Notice was considered to be incomplete by Canada Post; however, the agent did end up receiving complete copy of the dispute resolution package. At the hearing, the agent provided his rental unit address as a complete address for receiving mailed items.

The tenant took issue with the landlord's address for service being different than the address on the business licence for the investment company. I informed the tenant at

the hearing that the address was for the purpose of service and that the address provided was acceptable for the purposes of completing this hearing.

Preliminary Issue – Severance

I informed the parties at the beginning of the hearing that I was concerned that we would not have time to cover all aspects of the tenant's application in the time allotted. I informed the parties that the application in relation to the 10 Day Notice took precedence and as such would be heard first. I informed the parties that if time allowed I would continue to hear evidence in relation to the remainder of the tenant's application.

The hearing lasted 60 minutes. The only issues covered in that time were those in relation to the 10 Day Notice.

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the officer may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

As the tenant's applications for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement is not related to the 10 Day Notice, I am exercising my discretion to dismiss that portion of the tenant's claim with leave to reapply.

I informed the parties of this decision at the hearing.

This portion of the tenant's claim is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

Preliminary Issue – Amendment to 10 Day Notice

The tenant correctly pointed out that the 10 Day Notice contains a typographical error. In particular the rental unit address is incorrect as a "3" has been replaced with a "6". The landlord requested that I exercise my discretion to amend the 10 Day Notice. I ask the tenant if he understood that the 10 Day Notice was for him. The tenant did not answer the question, but submitted that the 10 Day Notice was made void by the typographical error.

Section 68 allows me to amend notices. In particular I can amend notices where the tenant knew or ought to have known the information that was in error.

In this case, I find that the tenant ought to have known that the 10 Day Notice was in respect of this rental unit. Furthermore, this is the only rental unit he occupies within the residential property. As such, the amendment is allowed and the typographical error is corrected.

Issue(s) 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

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began 1 July 2014. The parties entered into a written tenancy agreement. I was not provided with a copy of the tenancy agreement. Monthly rent of \$930.00 is due on the first. The landlord continues to hold the tenant's security deposit in the amount of \$435.00.

On 16 June 2015, the landlord issued a 10 Day Notice to the tenant. The landlord served the tenant with the notice by posting it to the tenant's door. The 10 Day Notice set out that it was given as the tenant had failed to pay \$3,980.00 in rent that was due 1 June 2015. The 10 Day Notice set out an effective date of 29 June 2015.

The agent testified that the tenant has rent arrears prior to May 2015, \$930.00 in rent arrears for May 2015 and \$930.00 in rent arrears for June 2015. The agent testified that the tenant has not paid any amount to his rent arrears since the issuance of the 10 Day Notice. The agent testified that he is not aware of any reason that would entitle the tenant to deduct any amount from rent. The agent testified that he last received any payment from the tenant in April 2015. The agent testified that the current rent arrears are \$6,010.00.

The tenant admits that he has rent arrears, but could not confirm an amount. The tenant submits that he believes that he is owed amounts as compensation for the landlord's alleged breaches of the Act.

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

There are various provisions of the Act that permit a tenant to deduct amounts from rent:

- Subsection 19(2) permits a tenant to deduct amounts from rent to recover the excess amounts of a security deposit that did not comply with the Act.
- Subsection 33(7) permits a tenant to deduct amounts from rent for the costs of emergency repairs.
- Subsection 43(5) permits a tenant to deduct the amount of a rent increase which did not comply with the Act from rent.
- Subsection 51(1.1) permits a tenant to deduct one month rent where the landlord has issued a notice to end tenancy pursuant to section 49.
- Subsection 65(1) and subsection 72(2) permit a tenant to deduct rent to recover an amount awarded in an application before this Branch.

There are no other deductions from rent permitted under the Act or regulations. The tenant is not entitled to deduct any amount from rent for a future possible order of this Branch.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice. I find that as at 16 June 2015, the tenant had rent arrears that entitled the landlord to issue the 10 Day Notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. I find that the 10 Day Notice was validly issued and the landlord was entitled to possession on the effective date of that notice. The tenant's application to cancel the 10 Day Notice is dismissed without leave to reapply. As the tenant's application is dismissed the landlord is entitled to an order of possession effective two days from service on the tenant.

Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed without leave to reapply.

The remainder of the tenant's claim is dismissed with leave to reapply.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) 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 subsection 9.1(1) of the Act.

Dated: August 14, 2015

Residential Tenancy Branch

