



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NOVAK HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

The tenant applies pursuant to s. 46(4) of the *Residential Tenancy Act* (the “Act”) for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued by the landlords.

Both of the individual landlords and one of the tenants attended the hearing. The hearing process was explained and the participants were asked at both the beginning and the end if they had any questions. All participants were given a full opportunity to be heard, to present affirmed testimony and documentary evidence, to make submissions and to respond to submissions made by the other party.

There was no dispute that the landlords served the tenant personally with a 10 Day Notice to End Tenancy dated October 29, 2016 for unpaid rent for October (the “October Notice”), and with a second 10 Day Notice to End Tenancy dated November 2, 2016 for unpaid rent for November (the “November Notice”). Service dates for these Notices are set out below.

At the outset of the hearing, the tenant clarified that his original Application for Dispute Resolution dated November 2, 2016 (the “Application”) seeking to cancel the landlords’ October Notice indicated, incorrectly, that the landlords’ October Notice was received on November 10, 2016, and that the tenant’s Application this was subsequently corrected to reflect he had in fact received the October Notice on October 29, 2016. The tenant also confirmed that he had only filed one Application in response to the two Notices.

Both the individual landlords and the tenant also confirmed that the tenant received complete copies of both the October Notice and the November Notice, although only the first page of each were submitted in evidence.

Issues to be Decided

Should the landlords' October Notice be cancelled and, if so, are the landlords entitled to an order of possession?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on November 1, 2013 for a 12 month term and became a month to month tenancy after the expiry of that term. As shown on the Notice of Rent Increase also in evidence, the current monthly rent, due on the first day of each month, is \$3,290.00. Although the tenant's Application stated that he had paid two months' rent as security deposit, the tenant testified at the hearing that he had been mistaken, and both parties agreed at the hearing that the tenant had in fact paid a security deposit of \$1,600.00 and a pet deposit of \$1,600.00 at the start of the tenancy.

Both parties also agreed that on October 29, 2016, the landlords issued and personally served the tenant with the October Notice for rent owing for October. Both parties further agreed that the landlords issued and served the November Notice on November 2, 2016 for rent owing for November. It was also agreed that rent remains outstanding for both October and November and that the tenant and his wife and three children remain in the rental unit.

The tenant testified that he lost his job earlier this year and that paying the rent in a timely fashion has been difficult for him as a result. The tenant is clearly upset that he has not been able to pay the amounts owing and wishes to do so in the future. The individual landlords have some sympathy for the tenant's position, and the parties have been communicating with one another.

However, the tenant did not argue that there were any grounds under the Act for disputing the Notices. Nor was there any documentary evidence of any grounds upon which the Notices could be challenged.

Analysis

Section 46 of the Act allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant the 10 Day Notice effective not less than 10 days after the tenant's receipt of the notice. The 10 Day Notice must comply with s. 52. I find that the October and November Notices comply with s. 52.

Section 46(4) allows a tenant to dispute a 10 Day Notice, and the tenant in this case has done so. However, s. 26 of the Act requires that a tenant pays rent when it is due under the tenancy agreement unless the tenant has a right under the Act, regulations, or tenancy agreement, to withhold all or a portion of the amount owing. The circumstances under which a tenant has such a right are very limited, and the tenant has not claimed that any apply. Accordingly, I uphold the landlords' October Notice.

Section 55 of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy, the director must grant the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with s. 52 and (b) the director upholds the landlord's notice. As set out above, the landlord's October Notice complies with s. 52, and is by this decision upheld. The landlord is as a result entitled to an Order of Possession pursuant to s. 55 of the Act.

The tenant has not applied to dispute the November Notice. Nor has he paid the monies owing within 5 days of receiving the November Notice. As per s. 46(5) of the Act the tenant is thus conclusively presumed to have accepted that the tenancy has ended on the effective date of the November Notice, and ought to have vacated the unit by that date. The landlord would have been entitled to an Order of Possession on this basis if the landlord had applied for such an order, and if I had not already ordered the same relief under the October Notice.

Conclusion

The tenant's application to cancel the October Notice is dismissed. The landlords' October Notice is upheld. As the October 10 Day Notice is effective, the tenants should have vacated the rental unit by November 10, 2016.

Accordingly, I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. Should the tenants or anyone on the premises 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 S. 9.1(1) of the *Act*. Pursuant to s. 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*

Dated: November 30, 2016

Residential Tenancy Branch