



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

matter regarding THE CEDARS MOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR, CNL

Introduction

This hearing was set for a telephone conference call at 9:00 a.m. in response to a Tenant's Application for Dispute Resolution (the "Application") made on January 4, 2017. The Tenant applied to cancel a notice to end tenancy for unpaid rent and to cancel a notice to end tenancy for the Landlord's use of the rental property.

An agent for the company Landlord appeared for the hearing and provided affirmed testimony as well as documentary and digital evidence prior to the hearing. However, there was no appearance for the Tenant during the 16 minute hearing. The Landlord's agent testified that she had been personally served with documents for this hearing by the Tenant on January 12, 2017.

Preliminary Findings

The Landlord confirmed that the Tenant had not been served with a 2 month notice to end tenancy for the Landlord's use of the property. The Landlord testified that the 10 Day Notice dated January 2, 2017 was the only notice to end the tenancy served to the Tenant personally.

I also noted that the Tenant had only provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") into evidence and no 2 month notice was evident before me. Therefore, I dismissed the Tenant's Application to cancel a notice to end tenancy for the Landlord's use of the property as there is insufficient evidence before me to suggest that the Tenant was served with a proper 2 month notice that complied with the requirements of Section 52 of the *Residential Tenancy Act* (the "Act").

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure state that 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. As the Applicant Tenant failed to appear for the hearing and present the merits and reasons to dispute the 10 Day Notice, and the Landlord appeared and was ready to proceed, I dismissed the Tenant's Application without leave to reapply.

Section 55(1) of the Act provides that if a tenant makes an Application to dispute a landlord's notice to end a tenancy, the director must grant an order of possession to the landlord if the notice to end tenancy complies with Section 52 of the Act.

I have examined the 10 Day Notice dated January 12, 2017 provided by the Tenant into evidence. I find the Landlord used the approved form and the contents within comply with Section 52 of the Act. The Notice shows a vacancy date of January 11, 2017.

The Landlord's agent testified that the Tenant is still occupying the rental unit and has not paid any rent for January or February 2017 at the time of this hearing. The Landlord testified that she filed a monetary claim against the Tenant for unpaid rent and damages to the rental unit which is scheduled to be heard on February 15, 2017; the file number for that hearing appears on the front page of this Decision.

As the Tenant's Application has been dismissed, I must now grant the Landlord an Order of Possession pursuant to Section 55(1) of the Act. In consideration of when the Order of Possession is to take effect, the vacancy date on the 10 Day Notice has now passed and the evidence before me is that the Tenant is still occupying the rental unit without paying rent. Therefore, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant.

Copies of this order are attached to the Landlord's copy of this Decision. This order may be filed and enforced in the BC Supreme Court as an order of that court if the Tenant fails to vacate the rental unit. The Tenant may also be held liable for any enforcement costs incurred by the Landlord to obtain vacant possession of the rental unit.

The Landlord's monetary claim will be heard and determined in the February 15, 2017 hearing. In the interim period the Tenant is cautioned to comply with Section 26(1) of the Act and pay the Landlord the outstanding rental arrears.

The parties are also cautioned that they are required to serve and provide evidence for the February 16, 2017 hearing separately to this file. Any evidence provided by the parties for this hearing and file number will not be considered in the February 15, 2017 hearing.

Conclusion

The Tenant's Application is dismissed **without** leave to re-apply as he failed to appear for the hearing and present the merits of his Application. The Landlord is granted a two day Order of Possession to end the tenancy.

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: February 01, 2017

Residential Tenancy Branch