



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, ERP, RP, PSF, LRE, RR, O

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- cancellation of the landlord's 10 Day Notice To End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice");
- an order for the landlord to comply with the Act, regulations or the tenancy agreement;
- an order that the landlord make emergency repairs for health or safety reasons;
- an order that repairs be made to the unit, site or property;
- an order that the landlord provide services or facilities required by law;
- an order to suspend or set conditions on the landlord's right to enter the rental unit;
- an order to allow the tenant to deduct the cost of repairs, services or facilities from the rent; and
- unspecified other relief.

Preliminary and Procedural Matters

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

Upon review of the tenant's application I have determined that I will not deal with all the dispute issues the tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will only deal with the tenant's request to dispute the landlord's 10 Day Notice. I dismiss the balance of the tenant's application with leave to reapply.

Although both parties indicated that they had submitted a copy of the 10 Day Notice to the Residential Tenancy Branch as part of their evidence, there was no record of any copy having been received. As a result the landlord and tenant were each asked to provide a copy by fax to the Residential Tenancy Branch by 4:00 p.m. on the date of the hearing. A copy of the 10 Day Notice was received by fax as requested.

Issue to be Decided

- Is the tenant entitled to cancellation of the landlord's 10 Day Notice?

Background and Evidence

The undisputed evidence established that a month to month tenancy started on October 12, 2016. Rent in the amount of \$615.00 is due on the first day of each month. The tenant provided a security deposit in the amount of \$300.00 on or about the start of the tenancy. The landlord lives in the same building as the tenant.

The landlord testified that the tenant did not pay the rent that was due for each of the months of December 2016, January 2017, February 2017 and March 2017. The tenant agreed that the rent for each of these months has not been paid.

The landlord testified that on December 5, 2016 he left for a holiday and returned on February 10, 2017. The landlord testified that before he left he asked the tenant for post-dated cheques for the rent. The landlord testified that he left his contact information with the tenant so that the tenant could reach the landlord on his holidays. The landlord submitted a copy of the contact information that the landlord said he had left with the tenant.

The tenant testified that the landlord did not provide his contact information so that the tenant was unable to contact the landlord while he was away on holidays. The tenant testified that after the landlord left for holidays, the tenant needed to cancel the post-dated cheques he had given the landlord for rent. The tenant testified that he was unable to pay the rent that was due without being able to contact the landlord to make alternate arrangements.

After returning from holidays, the landlord became aware that the tenant's rent cheques had been returned for insufficient funds. The landlord served the tenant with a 10 Day Notice by posting a copy on the tenant's door on February 20, 2017. The tenant acknowledged receipt of the 10 Day Notice on February 20, 2017. The effective move out date in the 10 Day Notice is February 28, 2017.

The tenant acknowledged that after the landlord returned on February 10, 2017, the tenant did not make any arrangements to pay the unpaid rent. The tenant testified that he did not pay rent for the month of March 2017 due to issues with the unit that the tenant wanted remedied.

The tenant is seeking cancellation of the 10 Day Notice to allow the tenancy to continue.

Analysis

Based on the documentary evidence, testimony of the landlord and tenant provided during the hearing, and on the balance of probabilities, I find the following.

Based upon the undisputed evidence, I find that the tenant was required to pay rent in the amount of \$615.00 on the first day of each month. Based upon the tenant's own admission, I find that the tenant did not pay rent for each of the months of December 2016, January 2017, February 2017 and March 2017.

I am not satisfied that the tenant's failure to pay rent for each of the months of December 2016, January 2017 and February 2017 was due to the absence of the landlord. I have taken into consideration the fact that the tenant acknowledged withholding rent for the month of March 2017 after the landlord returned from holidays. I have also taken into consideration the fact that the tenant did not make any attempts to make arrangements to pay the unpaid rent for each of the months of December 2016, January 2017 and February 2017 after the landlord returned or after receipt of the 10 Day Notice.

Section 46(1) of the *Act* stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant acknowledged receiving the 10 Day Notice on February 20, 2017, I find that the earliest effective date of the Notice is March 2, 2017

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the 10 Day Notice required the tenant to vacate the rental unit on March 2, 2017, and not February 28, 2017.

Based upon the foregoing, I find that the tenant is not entitled to cancellation of the landlord's 10 Day Notice. Therefore, I dismiss the tenant's application and the tenancy will end.

When a tenant's application to dispute a landlord's notice to end a tenancy is dismissed, s. 55 of the *Act* requires me to grant an order of possession if the landlord's notice to end a tenancy complies with section 52 of the *Act*.

Based upon the documentary evidence, I find that the landlord's 10 Day Notice is valid and complies with s.52 of the *Act*. Therefore, I grant an order of possession to the landlord.

Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed and the tenancy will end.

The balance of the tenant's application is dismissed with leave to reapply as these claims were unrelated to the issue of the Notice to end tenancy.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 20, 2017

Residential Tenancy Branch