



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application pursuant to section 46 of the *Residential Tenancy Act* (the *Act*) to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice).

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.

Preliminary Issue – Service of Documents and Opportunity to File Late Evidence

The tenant confirmed that he received two 10 Day Notices on November 9, 2017, posted on his door and sent by the landlord by registered mail. I find that the tenant was duly served with these 10 Day Notices on November 9, 2017, in accordance with section 88 of the *Act*.

The tenant testified that he served the landlord with notice of this dispute resolution hearing by way of a text message. He said that he did not send the landlord a copy of the dispute resolution hearing package, nor did he serve the landlord with copies of the written evidence he sent to the Residential Tenancy Branch (the Branch).

At the hearing, the landlord confirmed that he first heard about the tenant's application to dispute the 10 Day Notices from the tenant, but he was never provided with a copy of that application, nor the Notice of Hearing. He said that he called the Branch on November 29, to obtain the call-in details and participant code to enable him to attend this teleconference hearing.

As the tenant did not serve the landlord with copies of his written evidence, I find that he did not serve these documents to the landlord in accordance with section 88 of the *Act*. For this reason, I have not taken the tenant's written evidence into consideration in making my decision.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

The tenant has not served the landlord in a manner required by section 89(1) of the *Act*. Although I am not satisfied that the landlord was properly served with the tenant's application for dispute resolution, the landlord confirmed that he understood that the sole focus of this hearing was to consider the tenant's application to cancel the 10 Day Notices he issued to the tenant on November 9, 2017. On this basis and in accordance with the powers delegated to me pursuant to paragraph 71(2)(c) of the *Act*, I find that the landlord has been sufficiently served with notice of this hearing, despite not having been served in accordance with section 89(1) of the *Act*. I do so as I am fully confident that the landlord was prepared to respond to the case presented by the tenant and was in favour of proceeding with a hearing of the tenant's application on the day of this hearing.

During the hearing, the landlord read the contents of the 10 Day Notices he had issued into the record, and the tenant confirmed that this sworn testimony accurately reflected the content of the 10 Day Notice. As the landlord had not been properly notified of this hearing by the tenant and had little opportunity to submit written evidence, I advised the landlord that I would allow him to submit copies of the 10 Day Notices he referenced during this hearing in order to consider whether these Notices met the requirements of section 52 of the *Act* as to their form and content. Shortly after the hearing, the landlord faxed copies of both of these Notices to the Branch, which I have taken into consideration in reaching my decision,

Issues(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

This tenancy began on April 25, 2014, when the parties signed a one year fixed term tenancy agreement. The original term covered the period from May 1, 2014, until April 30, 2015. On the expiration of the original term, this tenancy converted to a month-to-month tenancy. Monthly rent was originally set at \$765.00, payable in advance on the first of each month. The monthly rent has since increased to \$785.00. The landlord continues to hold the tenant's \$475.00 security deposit transferred from an earlier tenancy with the landlord.

The landlord gave undisputed sworn testimony that the tenant's rent payment for September 2017 was not honoured by the tenant's bank as there were insufficient funds in his account at that time. As there had not been previous problems with non-payment of rent in the past, the landlord said that he delayed issuing a 10 Day Notice in the hopes that the tenant would be able to settle this account. When a similar situation occurred for November 2017, the landlord issued two 10 Day Notices, one for the outstanding September 2017 rent, and the second for unpaid rent also owing for November 2017. Each of these 10 Day Notices identified \$785.00 as owing.

Although the tenant applied to cancel these Notices, he did not pay rent towards either of these months of outstanding rent, until his December payment of \$785.00 was made with sufficient funds in his account to pay for one of these months. The landlord applied the December 1, 2017 pre-authorized debit to the outstanding rent from September 2017. At the time of this hearing, the parties agreed that the tenant has two months of outstanding rent owing to the landlord, which the landlord considered owing for November and December 2017.

The tenant explained that he and his female friend who had lived with him during this tenancy (and was observing this hearing) had always been excellent tenants. They had not been delinquent in paying rent in the past and were not attempting to avoid paying rent. However, a combination of circumstances had prevented them from being able to earn enough over the past few months to pay their rent. The tenant asked for leniency and extra time to pay the outstanding rent. He testified that his female friend had been

trying to find alternative accommodations for them for some time, but had been unsuccessful in doing so in their community at a monthly rent that they could afford.

While not unsympathetic to their situation, the landlord said that he knew that he could obtain tenants on short notice who would be willing and able to pay the rent should the tenant's application be dismissed and an Order of Possession issued.

Analysis

Section 26(1) of the *Act* establishes that "a tenant must pay rent 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."

There is undisputed sworn testimony that the tenant failed to pay the September 2017 and November 2017 rent within five days of receiving the two 10 Day Notices issued for those months on November 9, 2017. Although the tenant applied to cancel these Notices pursuant to section 46(4) of the *Act* within five days of receiving these Notices, there is undisputed sworn testimony that his next payment to the landlord did not occur until December 1, 2017. The landlord testified that he accepted the December 2017 payment for use and occupancy only and not to reinstate this tenancy.

I find that the tenant has not complied with section 26(1) of the *Act* and has no valid application to cancel the landlord's 10 Day Notices. Under these circumstances, I dismiss the tenant's application to cancel the 10 Day Notices.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

After this hearing, I reviewed the form and content of the two 10 Day Notices issued to the tenant on November 9, 2017, and faxed to the Branch shortly after the completion of this hearing. I find that these Notices, were accurately described in detail by the landlord in his sworn testimony. The tenant did not question the accuracy of the landlord's description of the contents of these Notices at the hearing. As I find that the landlord's 10 Day Notices comply with the form and content of section 52 of the *Act*, I must grant the landlord an Order of Possession for this rental unit. I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The tenant's application to cancel the 10 Day Notices is dismissed without leave to reapply. I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant and any occupant 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 21, 2017

Residential Tenancy Branch