



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF, LRE

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), recover the filing fee, and obtain an Order restricting the Landlord’s right to enter their rental unit.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a Notice to End Tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a Notice to End Tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenant did not attend. The Agent attended the hearing at the scheduled time, ready to proceed, and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Agent, copies of the Decision and any applicable Orders will be e-mailed to them at the e-mail address provided in the hearing.

Preliminary Matters

I identified that the Applicant, who did not appear at the hearing, did not submit a copy of the 10 Day Notice for consideration. The Agent testified that although they believe that the Tenant vacated the rental unit sometime in December, they have discovered that the Tenant had an undisclosed roommate who is refusing to leave the premises. As

a result, the Agent requested that an Order of Possession be issued if the Tenant is unsuccessful in seeking to cancel the 10 Day Notice.

As a result of the above, I requested that the Landlord submit to the Residential Tenancy Branch (the "Branch") a copy of the 10 Day Notice and proof of service for my consideration no later than 4:30 P.M. on January 15, 2017. I advised the Landlord that if the 10 Day Notice was not received, I would render my decision without consideration of it. As a copy of the 10 Day Notice and Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities (the "Proof of Service") was received within the timeframe noted above, I have accepted them for consideration in rendering this decision.

Issue(s) to be Decided

Is there a valid reason to cancel the 10 Day Notice under the *Act*?

If the Tenant is unsuccessful in seeking to cancel the 10 Day Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The 10 Day Notice in the documentary evidence before me, dated October 25, 2017, has an effective vacancy date of November 5, 2017, and indicates that as of October 1, 2017, the Tenant owed \$920.00 in outstanding rent. The Proof of service, which is signed by the Agent and the witness, indicates that the 10 Day Notice was served on the Tenant on October 25, 2017, by attaching a copy to the door of the Tenant's rental unit and by leaving a copy in the mail box or the mail slot of the Tenant's residence.

The Tenant applied to cancel the 10 Day Notice; however, they did not appear at the hearing of their own Application to provide any evidence or testimony.

Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 and 90 of the *Act*, I find that the Tenant was served with the 10 Day Notice on October 28, 2017, three days after it was posted to their door and left in their mailbox.

As the Tenant failed to attend the hearing to present any evidence or testimony in support of their Application, their Application is dismissed without leave to reapply. I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a Notice to End Tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a Notice to End Tenancy that is compliant with section 52 of the *Act*.

Section 55 of the *Act* states the following with regards to an Order of Possession for the Landlord:

Order of possession for the landlord

- 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.

Based on the above, I must now turn my mind to whether the 10 Day Notice issued by the Landlord complies with section 52 of the *Act* which states:

Form and content of notice to end tenancy

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement

made in accordance with section 45.2 [*confirmation of eligibility*], and

(e) when given by a landlord, be in the approved form.

The 10 Day Notice in the documentary evidence before me is signed and dated by the Agent, gives the address of the rental unit, states the effective date of the 10 Day Notice and the grounds for ending the tenancy, and is in the approved form. As a result, I find that the 10 day Notice complies with section 52 of the *Act* and the Landlord is therefore entitled to an Order of Possession.

Conclusion

The Tenant's Application is dismissed in its entirety without leave to reapply.

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. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: January 15, 2018

Residential Tenancy Branch