



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNL, MT, PSF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking more time to make an application to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”), cancellation of the Two Month Notice, cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), and an Order for the Landlord to provide services or facilities.

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 Tenant, the Landlord, and legal counsel for the Landlord. All parties provided affirmed testimony. The parties were given 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 was accepted for consideration in this matter; however, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, a copy of the decision and any orders issued in their favor will be e-mailed to them at the e-mail address provided in the Application. At the request of the Landlord, a copy of the decision and any orders issued in their favor will be e-mailed to their legal counsel at the e-mail address provided in the hearing.

Preliminary Matters

Dismissal of Unrelated Matters

The Applicant sought multiple remedies under multiple sections of the *Act*, however, section 2.3 of the Residential Tenancy branch Rules of Procedure (the “Rules of Procedure”) states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the priority claims made by the Tenant relate to the cancellation of both the Two Month Notice and the One Month Notice and whether the tenancy will continue or end in accordance with the *Act*. As the Tenant’s claim for an Order for the Landlord to provide services or facilities depends on whether the Tenancy ends or continues, and is not sufficiently related to either of the Notices to End Tenancy being disputed by the Tenant, I therefore exercise my discretion to dismiss the Tenants claim for an Order for the Landlord to provide services or facilities and I grant the Tenant leave to reapply for this matter.

Two Month Notice to End Tenancy

The Tenant applied for more time to file an Application to cancel a Two Month Notice and sought cancellation of the Two Month Notice in the hearing. However, at the time of the hearing a copy of the Two Month Notice was not before me for consideration. I advised the parties that I would accept testimony in relation to the Two Month Notice, and advised the Tenant to provide a copy to the Residential tenancy Branch (the “Branch”) by 4:30 PM on the date of the hearing, January 24, 2018. I advised the parties that if I did not receive a copy of the Two Month Notice I would render my decision without consideration of it.

Although I waited several days beyond the timeline noted above, a copy of the Two Month Notice was not received by the Branch. Rule 2.5 of the Rules of Procedure states that to the extent possible, if the applicant seeks to cancel a Notice to End Tenancy, the applicant should submit a copy of the Notice to End Tenancy at the time the application is submitted. Section 59 of the *Act* also states that an Application must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and I find that this includes a copy of any Notice to End Tenancy that a tenant seeks to cancel or a landlord seeks to enforce.

As I do not have a Two Month Notice before me for consideration, I find that it is not possible for me to determine the validity or invalidity of any such notice, should it exist, in accordance with the *Act*. As a result of the above, and keeping in mind that the Tenant was provided additional time to submit a copy of the Two Month Notice to the Branch, the Tenant's Application for more time to make an Application in relation to the Two Month Notice and their Application seeking cancellation of the Two Month Notice are dismissed without leave to reapply.

Evidence

In the hearing the both parties raised concerns regarding the service and receipt of evidence. The Tenant believed that they had uploaded evidence; however, the Landlord testified that no evidence was received from the Tenant and I verified that no evidence was received from the Tenant by the Branch in relation to this hearing. As a result, I did not consider any documentary evidence from the Tenant in relation to this matter. The Tenant also testified that they only received a copy of the 10 Day Notice from the Landlord in relation to this hearing. Although other documentary evidence was received by the Branch from the Landlord, the Landlord acknowledged that this evidence was not provided to the Tenant in accordance with the Rules of Procedure. As a result, the only documentary evidence I accepted for consideration in this matter was the copy of the 10 Day Notice provided by the Landlord.

Issue(s) to be Decided

Is the Tenant entitled to an Order cancelling 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 30, 2017, has an effective vacancy date of November 9, 2017, and indicates that the 10 Day Notice was served because the Tenant owed \$2,700.00 in outstanding rent as of October 1, 2017.

The 10 Day Notice indicates that it was posted to the door of the Tenant's rental unit on October 30, 2017, and the Tenant acknowledged receiving it three days later on November 2, 2017.

The Tenant testified that since the start of their tenancy in December of 2016, the property has been sold twice. The Tenant stated that rent in the amount of \$9000.00 is due on the first day of each month in accordance with their original tenancy agreement and that utilities are included in this amount. The Tenant testified that after the Landlord took over ownership, the electricity was disconnected and the Tenant was required to pay \$900.00 a month in rent in addition to connecting and paying for his own electricity. A copy of the original tenancy agreement was not before me for consideration.

Legal counsel for the Landlord stated that although the Landlord was aware that the property had a tenant when it was purchased, the Landlord was never provided with a copy of the tenancy agreement. Legal counsel for the Landlord stated that after taking over ownership of the property, a mutual agreement was reached between the tenant and the Landlord whereby the Tenant would pay \$900.00 a month in rent and connect and pay for their own utilities. A copy of this agreement was not before me for consideration.

Legal counsel for the Landlord stated that the Landlord and the Landlord's real estate agent attend the property several times each month in an attempt to collect the rent and that each time the Tenant would refuse to answer the door. As a result, legal counsel for the Landlord stated that the Tenant currently owes rent for August, September, October, November, and December of 2017, and January of 2018.

The Tenant denied reaching a mutual agreement with the Landlord to pay for his own electricity and acknowledged that he withheld rent for August 2017 as compensation for the cost of his electricity and the \$750.00 deposit he was required to pay to set up his own electricity account. The Tenant denied that the Landlord or an agent for the Landlord regularly attended the property to collect rent and stated that the Landlord only attended the property once since taking over ownership. The Tenant stated that despite his efforts to pay the rent, the Landlord was never been available to accept it. When questioned about his efforts to pay the rent, the Tenant acknowledged that he only ever made one phone call to the Landlord in relation to the payment of rent on approximately September 5, 2017. The Tenant further testified that since that time, he has made no further efforts to pay the rent as he believes that it is the Landlord's responsibility to collect it from him.

Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenant was served with the 10 Day Notice on November 2, 2017, the day they acknowledge receiving it.

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Although there was a dispute about the exact amount of rent due on the date the 10 Day Notice was served, as there is no monetary claim before me for rent, I find that the matter I must decide is whether the 10 Day Notice is valid, not the exact amount of rent outstanding. Based on the testimony of both parties I am satisfied that at least some

amount of rent remained outstanding at the time the 10 Day Notice was served. As a result, I find that the 10 Day Notice is valid.

Although the Tenant provided testimony as to why the rent was not paid, ultimately he did not provide any documentary evidence or testimony to establish that he had a right under the *Act* to deduct all or a portion of the \$900.00 in rent owed for August 2017, September 2017, or October, 2017, and his claim for the cancellation of the 10 Day Notice is therefore dismissed without leave to reapply. Further to this, I note that the Tenant acknowledged that as of the date of the hearing, no rent has been paid to the Landlord for August, September, October, November, or December of 2017, or January of 2018.

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 the following:

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.

As the 10 Day Notice is signed and dated by the Landlord, gives the address for the rental unit, states the effective date of the notice and the grounds for ending the tenancy, and is in the approved form, I find that it complies with section 52 of the *Act*. As a result, I find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 10 Day Notice has passed and the Tenant

acknowledges that rent has not been paid, the Order of Possession will be effective two days after service of the Order on the Tenant.

Conclusion

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 31, 2018

Residential Tenancy Branch