



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 for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46 of the *Residential Tenancy Act* (the *Act*).

The landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant testified that they served the Application for Dispute Resolution (the Application) and evidence by way of registered mail to the landlord on January 04, 2018. The landlord confirmed that they received the documents. In accordance with sections 88 and 89 of the *Act*, I find the landlord was duly served with the Application and the tenant's evidence.

The tenant confirmed that they received the 10 Day Notice, which was personally served to him on January 03, 2018. In accordance with section 88 of the *Act*, I find the tenant was duly served with 10 Day Notice on January 03, 2018.

Issue(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

The landlord and the tenant agreed that this tenancy began on May 30, 2017, with a monthly rent of \$950.00, due on the first day of each month. The landlord testified that he is currently retaining a security deposit in the amount of \$500.00.

A copy of the signed 10 Day Notice, dated January 03, 2018, and identifying \$950.00 in unpaid rent with an effective date of January 12, 2018, was included in the tenant's evidence.

The tenant also provided in their evidence a copy of a receipt from the landlord dated January 16, 2018, for \$950.00 paid by the tenant for the January 2018 rent. The landlord has written on the receipt that "It does not cancel the notice to end tenancy, the tenant must move"

The landlord testified that the tenant did not pay the rent for January 2018 until January 16, 2018, which is more than the five days allowed by the *Act*. The landlord testified that he is seeking an Order of Possession.

The tenant submitted that, due to circumstances in his life, he was not able to pay the January 2018 rent until he received money from another source.

Analysis

Section 26 of the Act requires 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.

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. As I have found the 10 Day Notice was duly served to the tenant on January 03, 2018, I find the tenant had until January 08, 2018, to dispute the 10 Day Notice or to pay the full amount of the arrears.

I find the tenant submitted their Application on January 04, 2018, within the five day time limit permitted under section 46 (4) the Act; however, I find the tenant did not provide any evidence that they paid the monthly rent within the five days allowed by the *Act* or were legally entitled to withhold any rent.

Based on the tenant's evidence and the testimony of both parties, I find the tenant paid the monthly rent on January 16, 2018, more than the five days allowed by section 46 (4) of the Act. I further find that the landlord has clearly indicated that his acceptance of the January 2018 monthly rent is only for the use and occupancy of the rental unit and not

for reinstatement of the tenancy. For the above reasons, the tenant's Application to cancel the 10 Day Notice is dismissed, without leave to reapply

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

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (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.*

I find that the 10 Day Notice complies with section 52 of the *Act*. Based on my decision to dismiss the tenant's application for dispute resolution and in accordance with sections 55(1) and 53(2) of the *Act*, I find that this tenancy ended on the corrected effective date of the 10 Day Notice, January 13, 2017. In this case, the tenant and anyone on the premises were required to vacate the premises by January 13, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant or 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: February 02, 2018

Residential Tenancy Branch