



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WARYAM MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 4, 2018 ("10 Day Notice"), pursuant to section 46.

The tenant did not attend this hearing, which lasted approximately 31 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the manager for the landlord company named in this application and that he had permission to speak on its behalf as an agent at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package from the Residential Tenancy Branch ("RTB"), not from the tenant. In accordance with section 71(2)(c) of the *Act*, I find that although the landlord was not served with the tenant's application from the tenant, I find that he received it from the RTB, had notice of it, and was sufficiently served with it.

The landlord testified that the tenant was served with the landlord's written evidence package on May 23, 2018. I notified the landlord that since the evidence was sent late and not received by the tenant at least 7 days prior to the hearing date, as required by Rule 3.15 of the *RTB Rules of Procedure*, that I could not consider the landlord's written evidence package at this hearing or in my decision.

The landlord testified that the tenant was personally served with the landlord's 10 Day Notice on March 4, 2018. The notice indicates an effective move-out date of March 14, 2018. In accordance with section 88 of the *Act*, I find that the tenant was personally

served with the landlord's 10 Day Notice on March 4, 2018. The tenant indicated this date in his application when he applied to cancel the notice.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submissions from the tenant, I order the tenant's application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

Issues 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

While I have turned my mind to the tenant's documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The landlord testified regarding the following facts. This month-to-month tenancy began on February 1, 2017. Monthly rent in the amount of \$850.00 is payable on the first day of each month. A security deposit of \$425.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice for unpaid rent of \$1,700.00 due on March 1, 2018. He said that this included unpaid rent of \$850.00 for each of February and March 2018. He said that the tenant paid February rent of \$850.00 on April 10, 2018, March rent of \$850.00 on April 25, 2018, \$600.00 towards April rent on May 17, 2018 and \$400.00 towards the balance of April rent (\$250.00) and some of May rent (\$150.00) on May 24, 2018. The landlord claimed that the tenant now owes only \$700.00 in unpaid rent for May 2018. The landlord stated that he issued receipts to the tenant for payment of rent indicating what the tenant paid for rent and what the tenant owed for rent.

The landlord seeks an order of possession based on the 10 Day Notice.

Analysis

According to subsection 46(4) of the *Act*, a tenant may dispute a 10 Day Notice by making an application for dispute resolution within five days after the date the tenant received the notice. The tenant received the 10 Day Notice on March 4, 2018, and filed his application to dispute it on March 9, 2018. Therefore, he was within the five day time limit to dispute the 10 Day Notice.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which in this case required the tenant to pay by the first day of each month.

On a balance of probabilities and for the reasons stated below, I accept the landlord's undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due of \$850.00 due on March 1, 2018, within five days of receiving the 10 Day Notice.

Although the tenant paid the March 2018 rent in full, he did not do so until April 25, 2018, more than five days after the receiving the 10 Day Notice on March 4, 2019. The landlord issued receipts for payment of rent but indicated that the tenant still had outstanding rent owing; therefore, I find that the landlord did not reinstate the tenant's tenancy.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days or to appear at this hearing to pursue his application, led to the end of this tenancy on March 14, 2018, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by March 14, 2018.

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.

As noted above, I dismissed the tenant's application. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. Accordingly, I find that the landlord is entitled to an Order of Possession effective five (5) days after service on the tenant. At the hearing, the landlord specifically requested that the tenant be given five days to move out, if the landlord was successful in obtaining an order of possession.

Conclusion

I grant an Order of Possession to the landlord effective five (5) days after service on the tenant. Should the tenant or anyone 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.

The tenant's entire application is dismissed without leave to reapply.

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: May 28, 2018

Residential Tenancy Branch