



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1155664 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46.

Tenant C.B., tenant D.M. and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Tenant C.B. testified that she had authority to speak on behalf of tenant K.B. at this hearing.

Tenant C.B. testified that she personally served the landlord the notice of dispute resolution package on May 12, 2018. The landlord confirmed receipt of the dispute resolution package. I find that the landlord was served with this package on May 12, 2018, in accordance with section 89 of the *Act*.

Tenant C.B. testified that she personally served the landlord's place of work with an amendment package in May 2018 contesting a new 10 Day Notice to End Tenancy (the "Second Ten Day Notice") dated May 18, 2018. The amendment package contained the Second 10 Day Notice and a letter from the landlord's previous agent to the tenants.

The landlord testified that he did not receive the amendment package but testified that he already had all of the documents contained therein. The landlord did not object to hearing the tenants' application to cancel the Second 10 Day Notice. I find that while the Second 10 Day Notice was not received by the landlord, Tenant C.B. served the amendment package on an agent of the landlord pursuant to section 89(b) in May 2018. I note that Section 55 of the *Residential Tenancy Act* (*Act*) requires that when a tenant submits an Application for Dispute Resolution 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 the *Act*.

Issue(s) to be Decided

1. Are the tenants entitled to cancel the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46 of the *Act*?
2. If the tenants' application is dismissed, is the landlord entitled to an order of possession, pursuant to section 55 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on October 1, 2016 and is currently ongoing. Monthly rent in the amount of \$1,200.00 is payable on the first day of each month. A security deposit of \$600.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenants have not paid rent since April 2018.

The landlord testified that the tenant did not pay rent on May 1, 2018 when it was due. On May 2, 2018 the landlord posted a 10 Day Notice to End Tenancy for unpaid rent with an effective date of May 16, 2018 (the "10 Day Notice") on the tenants' door.

Tenant C.B. confirmed receipt of the 10 Day Notice on May 2, 2018. Tenant C.B. testified that the 10 Day Notice incorrectly spelt her name and the name of tenant K.B. Tenant C.B. testified that she applied for dispute resolution on May 9, 2018.

The landlord testified that once the spelling mistakes in the 10 Day Notice were brought to his attention, he posted the Second 10 Day Notice dated May 18, 2018, with an effective date of May 29, 2018, on the tenants' door.

Tenant C.B. confirmed receipt of the Second 10 Day Notice on May 18, 2018. Tenant C.B. testified that she tried to pay May's rent on June 3rd or 4th, 2018 but that the landlord would not accept payment at that time.

Analysis

Amendment

Section 68 of the *Act*, states that an arbitrator may amend a notice to end tenancy if the person receiving the notice, knew, or should have known, the information that was omitted from the notice and, in the circumstances, it is reasonable to amend the notice.

In this case, the landlord miss-spelled two of the three tenants' names on the 10 Day Notice. Tenant C.B. testified that she knew that the 10 Day Notice, which stated her address, was intended to list her and the other tenants at that address but that two of the names were miss-spelled.

Pursuant to section 68 of the *Act*, I amend the 10 Day Notice to reflect the correct spelling of the two tenants whose names were miss-spelled. I find that in doing so, the tenants are not unduly prejudiced as they were aware that they were the intended recipients of the 10 Day Notice. I find that the tenants knew or ought to have known the correct spelling of their names. I find that it is reasonable in these circumstances to amend the 10 Day Notice.

10 Day Notice

Section 46 of the *Act* states that 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. Section 46 of the *Act* goes on to say that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

If a tenant who has received a notice under section 46 of the *Act* does not pay the rent or make an application for dispute resolution in the required time, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

In this case, tenant C.B. testified that the tenants received the 10 Day Notice on May 2, 2018 but did not pay rent or file for dispute resolution within five days. Therefore, I find that pursuant to section 46(5)(a), this tenancy was conclusively presumed to have ended on May 16, 2018, the effective date on the 10 Day Notice.

As this tenancy is conclusively presumed to have ended on May 16, 2018, I do not need to consider the Second 10 Day Notice.

I dismiss the tenant's application to cancel the 10 Day Notices, without leave to reapply.

Order of Possession

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the arbitrator must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 and the arbitrator, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the amended 10 Day Notice complies with section 52 of the *Act*.

Pursuant to section 55, I grant the landlord an Order of Possession.

Conclusion

I dismiss the tenants' application, 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 on the tenants**. Should the tenants 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: June 18, 2018

Residential Tenancy Branch