



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR
 OPR-DR, MNR

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 dispute a 10 Day Notice to End Tenancy for Unpaid Rent of Utilities (the “10 Day Notice”) dated May 4, 2018.

This hearing also dealt with a cross-application and an Amendment to an Application for Dispute Resolution (an “Amendment”) filed by the Landlord under the *Act* seeking an Order of Possession based on a 10 Day Notice dated June 4, 2018, as well as a Monetary Order for unpaid rent.

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 and two agents for the Landlord (the “Agents”), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of the Applications, the Amendment or the Notice of Hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); However, I refer only to the relevant facts and issues in this decision.

At the request of the Agents, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail address listed in the Landlord’s Application. At the

request of the Tenant, copies of the decision will be mailed to him at the dispute address.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing I identified that one of the applicants listed as a tenant is not listed in the tenancy agreement and appears to be an occupant rather than a tenant of the rental unit. When asked, the Tenant confirmed that the other applicant listed on his application was a short-term roommate and is not in fact a tenant.

The Residential Tenancy Branch (the "Branch") only has the authority to hear matters between tenants and landlords, not between occupants of a rental unit and either the tenants or landlords of the rental unit. As a result, I find that the other applicant listed in the Tenant's Application is not a party to this dispute. Based on the above, and in the absence of any objections from the parties, the Application was amended in the hearing to remove B.N. as an Applicant and therefore correctly reflect the parties to the dispute.

Preliminary Matter #2

An Amendment was filed by the Landlord and received by the Branch on June 19, 2018, adding a monetary claim to the Application in the amount of \$3,300.00 for unpaid rent. The Agent testified that the Amendment was served along with the Application, the Notice of Hearing, and their evidence package by registered mail on June 19, 2018. In support of this testimony the Agents provided a copy of the registered mail receipt in the documentary evidence before me.

As the Tenant confirmed in the hearing that he received the Amendment, as well as the original Application, the Notice of Hearing, and the evidence from the Landlord, I therefore amended the Landlord's Application to include the monetary claim for unpaid rent pursuant to the *Act* and the Rules of Procedure.

Preliminary Matter #3

Although the Agents confirmed that they received the Application and the Notice of hearing from the Tenant as well as a four page letter, they stated that they were unaware until this hearing that the letter pertained to this matter and not the tenancy in general as they were not advised by the Tenant that it applied to the hearing and nothing in the letter states that it is related the Tenant's Application, the Landlord's application, or the Amendment.

When asked, the Tenant testified that he simply dropped the letter off with the secretary at the Landlord's address for doing business and that although he did not advise her that it was for the hearing, he told her it was regarding his rental unit.

Having reviewed the evidence in question, I agree that noting in the four page letter explicitly states that it relates to this hearing or that it will be used as evidence in the hearing. Further to this, it stands to reason that not all correspondence given to or received by a Landlord as part of an ongoing tenancy necessarily relates to a dispute resolution hearing, should one exist. Based on the above, and given the testimony of both parties, I am not satisfied that the Landlord knew, or out to have known, that the four page document dropped off at the Landlord's address for doing business pertained to this hearing and as a result, I exclude it from consideration in this matter.

However, I advised the Tenant that I would accept any oral testimony he wished to present in the hearing in relation to the letter.

Preliminary Matter #4

Although only one 10 Day Notice dated June 4, 2018, was in the documentary evidence before me for consideration from the parties, both parties agreed that a 10 Day Notice Dated May 4, 2018, had also been served on and received by the Tenant on May 4, 2018. In the hearing the Tenant confirmed that he originally filed his Application on May 14, 2018, seeking to dispute the 10 Day Notice dated May 4, 2018. As a result, I accepted testimony from both parties regarding the form and content of the 10 Day Notice dated May 4, 2018, and requested that both parties submit a copy to the Branch, online or in-person at the Branch or a Service BC location no later than 5:00 P.M. on the date of the hearing, July 11, 2018.

As a copy of the 10 Day Notice dated May 4, 2018, was received from the Landlord in compliance with the instructions outlined above, I have accepted it for consideration in this matter.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the 10 Day Notice dated May 4, 2018?

Is the Landlord entitled to an Order of Possession based on the 10 day Notice dated June 4, 2018, or because the Tenant is unsuccessful in cancelling the 10 day Notice dated May 4, 2018?

Is the Landlord entitled to a Monetary Order for unpaid Rent?

Background and Evidence

Both parties agreed that the Tenant began residing in the rental unit in the fall of 2017 and that a written tenancy agreement was not signed until April 4, 2018. The written tenancy agreement in the documentary evidence before me states that the month-to-month tenancy began on April 1, 2018, and that rent in the amount of \$1,100.00 is due on the first day of each month. The parties confirmed that these are the correct terms of the tenancy and that no security deposit was paid.

Both parties agreed that rent has not been paid for May, June, or July of 2017, and as a result, the Landlord testified that two separate Notices to End Tenancy were served. The first 10 Day Notice in the documentary evidence before me, dated May 4, 2018, has an effective vacancy date of May 18, 2018, and states that the reason for ending the tenancy is because the Tenant has failed to pay \$1,100.00 owed in rent as of May 1, 2018. In the hearing the Tenant testified that he received the 10 Day Notice from his door on May 4, 2018, the same date the Agents testified that it was posted to the door of the rental unit.

The second 10 Day Notice in the documentary evidence before me, dated June 4, 2018, has an effective vacancy date of June 14, 2018, and states that the reason for ending the tenancy is because the Tenant has failed to pay \$2,200.00 owed in rent as of June 1, 2018. In the hearing the Tenant testified that he received the 10 Day Notice personally on June 4, 2018, the same date the Agents testified that it was personally served on 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 sections 88 and 90 of the *Act*, I find that the Tenant was served with the 10 Day Notice dated May 4, 2018, on May 4, 2018, and that he was subsequently served a second 10 Day Notice dated June 4, 2018, on June 4, 2018.

In the hearing the Tenant acknowledged that he received the first 10 Day Notice on May 4, 2018; however, he did not file his Application seeking to dispute this 10 day Notice until May 15, 2018, nor did he apply for more time to make this Application. Section 66 of the *Act* states that the director may extend a time limit established by the *Act* only in exceptional circumstances and section 6.2 of the Rules of Procedure states that the hearing is limited to matters claimed on the Application. Although the Tenant testified that he applied as soon as he could, he did not apply for more time to make his

Application seeking to cancel the 10 Day Notice dated May 4, 2018. Further to this, no evidence or testimony was provided regarding exceptional circumstances, should they exist, for why the Application was not filed on time.

Based on the above, I find that the Tenant failed to dispute the 10 Day Notice Dated May 4, 2018, within the allowable time period granted under section 46(4) of the *Act* and I decline to grant him more time to make that Application. I also accept the testimony of both parties that the full amount of rent owed according to the 10 Day Notice remains unpaid. As a result, I therefore dismiss the Tenant's Application seeking cancellation of the 10 Day Notice dated May 4, 2018, without leave to reapply.

Further to this, the Tenant acknowledged that he received a second 10 Day Notice on June 4, 2018. Although the Tenant submitted a copy of the second 10 Day Notice for my consideration, no Amendment to an Application for Dispute Resolution (an "Amendment") was before me from the Tenant seeking to add a dispute of the second 10 Day Notice to the already existing Application. As stated above, the hearing is limited to matters claimed on the Application. As no Application or Amendment seeking cancellation of the 10 Day Notice dated June 4, 2018, is before me from consideration from the Tenant, I find that he failed to dispute the 10 Day Notice dated June 4, 2018, within the allowable time period granted under section 46(4) of the *Act*. In any event, based on his testimony in the hearing, I also find that the Tenant failed to pay the overdue rent listed on the 10 Day Notice within the time period specified in section 46(4) of the *Act*.

Based on the above the Landlord is therefore entitled to an Order of Possession because the Tenant's Application seeking cancellation of the 10 Day Notice dated May 4, 2018, was dismissed and the 10 Day Notice complies with section 52 of the *Act*. In any event, the Landlord is also entitled to an Order of Possession pursuant to sections 46(5) and 55 of the *Act* as the Tenant did not pay the rent owed or dispute the 10 Day Notice dated June 4, 2018, within five days of receiving it and is therefore conclusively presumed to have accepted that the tenancy ends on the effective date of the 10 Day Notice.

As the effective dates of both notices have passed and the parties agree that no rent has been paid for May, June, or July of 2018, the Order of Possession will be effective two days after service on the Tenant. I also find that the Landlord is entitled to a Monetary Order in the amount of \$3,300.00; the amount both parties agree is currently owed for outstanding rent.

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.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$3,300.00. 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 Small Claims Division of the Provincial Court 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: July 12, 2018

Residential Tenancy Branch