



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR OPL FF CNR CNL OLC

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- an order of possession for landlord’s use of property pursuant to section 55;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- cancellation of the landlord’s 2 Month Notice to End Tenancy for Landlord’s Use of Property (the 2 Month Notice) pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

Issues

Is the landlord entitled to an order of possession or should both the 10 Day Notice and 2 Month Notice be set aside?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began on July 1, 2013 and the current monthly rent is \$1015.00 payable on the 1st day of each month.

The landlord testified the tenant failed to pay the \$1015.00 rent payable on May 1, 2018. The landlord testified that he attempted to serve the 10 Day Notice on May 16, 2017 but the tenant did not answer the door. The landlord left the 10 Day Notice with N.N., who is the building manager, and N.N. served the tenant with the 10 Day Notice in person on the following day.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated on the 10 Day Notice within five days of service of the Notice and has not paid any rent since.

The tenant acknowledged service of the 10 Day Notice and that he did not pay the full amount of the arrears indicated, within five days, of receiving the Notice. The tenant disputes the 10 Day Notice on the grounds that it was not served as indicated on the Notice. The tenant testified that J.N. did not serve the Notice but rather it was served by N.N. The tenant also disputes the 10 Day Notice on the grounds that he had a verbal agreement with the landlord G.N. and the building manager N.N. to reduce rent for repairs done to the rental building. The tenant testified that he delivered an invoice to the landlord for this repair work which included modifications and install of a building door.

The landlord replied that there was never any agreement to withhold or reduce rent for the repair work. The landlord testified that the tenant did ask if he could purchase the door and was told by G.N. that he would pay for the cost of the door only. The tenant submitted an invoice for \$2084.00. N.N. testified that he was present with the tenant when he purchased the door. The cost of the door was only \$80.00. N.N. testified that he told the tenant that the landlord would reimburse him the \$80.00 and there was no discussion about reimbursing him for any labour or install costs.

Analysis

I am satisfied that the tenant was personally served with the 10 Day Notice on May 17, 2018 pursuant to section 88 of the Act. It is not a requirement for the 10 Day Notice to be served by the same person signing the Notice as argued by the tenant.

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 indicated on the Notice or

dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

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.

I find the tenant's application to cancel the 10 Day Notice must be dismissed as the tenant acknowledged rent was not paid in full within 5 days after receiving the notice nor did the tenant have a right under this Act to deduct all or a portion of the rent. The tenant provided insufficient evidence that there was an agreement with the landlord to withhold the full rent for May 2018. I accept the landlord's testimony that the verbal agreement was only to reimburse the tenant for the cost of the door which was only \$80.00.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application. This amount can be retained from the security deposit.

As the tenancy has ended based on the 10 Day Notice, I find it not necessary to consider the merits of the 2 Month Notice as the tenancy has ended.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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: July 18, 2018

Residential Tenancy Branch