



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR LRE MNDCT OLC OT PSF RR

Introduction

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

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlords to provide services or facilities required by law pursuant to section 65;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlords personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on September 7, 2018. Accordingly, I find that the tenant was duly served with the 10 Day Notice in accordance with section 88 of the *Act*.

Preliminary Issue - Service of Documents

MC attended the hearing as he was one of the named respondents in the tenant's application. MC testified that not only was he not a landlord in this dispute, he also

testified that he was not served with the tenant's application for dispute resolution. No written tenancy agreement was submitted by either party for this hearing. The tenant testified that he had served MC with the package by way of registered mail, but was unable to provide the tracking number for the package at the hearing.

BG, the other named respondent, confirmed that he was personally served with the tenant's application and evidence. Accordingly, I find that BG was served in accordance with sections 88 and 89 of the *Act*.

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order.

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;...*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;...*

At the hearing, I advised both parties that in the absence of the tracking information, I could not confirm that MC was served in accordance with the *Act*. RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard, I find the tenant applied for a monetary award for losses related to this tenancy. As I do not have sufficient information to confirm whether MC should be a named respondent in the tenant's application, and as I was unable to confirm service of the application on MC, I am dismissing the monetary portion of the tenant's application with leave to reapply.

As both parties confirmed that they wished to proceed with the hearing in regards to the 10 Day Notice to End Tenancy, the hearing proceeded on that basis.

Preliminary Issue – Landlord’s Evidence

The tenant testified in the hearing that he did not receive the landlord’s evidence. The landlords responded that the evidence package was personally served to the tenant on October 22, 2018.

Rule 3.15 of the RTB’s Rules of Procedure establishes that “the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing”

The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as “at least” or “not less than” a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.15 and the definition of days, the last day for the landlords to file and serve evidence as part of their application was October 17, 2018.

This evidence was not served within the timelines prescribed by rule 3.15 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, I find that tenant was not served with the landlords’ evidence in a manner that would allow the tenant to properly review and respond to the evidence, and on this basis the landlords’ evidence will be excluded for the purposes of this hearing.

Issues to be Decided

Should the landlords’ 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Background and Evidence

This month-to-month tenancy began some time in 2014. The tenant testified that rent is set at \$650.00 per month, while the landlords testify that rent is \$750.00. The landlords testified that they took over this tenancy on August 2, 2018, and had no knowledge of a tenancy agreement. The tenant testified that no written tenancy agreement exists.

The landlords testified that they issued the 10 Day Notice on September 7, 2018 as the tenant has not paid rent for five months, from June 2018 through to October 2018.

The tenant admits that he has not paid September and October 2018 rent, but that rent was paid for the months of June through to August 2018 in cash, but no receipts were issued by the landlords. The tenant testified that there is a dispute about the amount of the monthly rent, and whether utilities are included in the rent. The tenant testified that due to the increased rent and dispute over whether utilities are included in the monthly rent, he has been unable to satisfy his obligations to pay the rent.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

- 26** (1) 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 have considered the testimony of both parties in the hearing, as well as the tenant's evidence submitted for this application. Although the amount the tenant owes is disputed by the tenant, and although the tenant provided an explanation for why he has not paid the outstanding rent, the tenant admitted to not paying the September 2018 rent in full as required by the *Act*. I find that the tenant did not have permission to withhold or deduct any rent, and accordingly I find that the tenant has failed to pay the outstanding rent as required by the *Act*. On this basis, I dismiss the tenant's application to cancel the 10 Day Notice dated September 7, 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.

I find that the 10 Day Notice complies with section 52 of the *Act*. I, therefore, find that the landlords are entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I dismiss the tenant's application to cancel the landlords' 10 Day Notice dated September 7, 2018. I find that the landlords' 1 Month Notice is valid and effective as of the effective date of September 19, 2018. I, therefore, grant an Order of Possession to the landlords effective two **days after service of this Order** on the tenant. Should the tenant and any occupant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

The remaining portion of the tenant's application is dismissed with 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: November 8, 2018

Residential Tenancy Branch