



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DUNCAN KIWANIS VILLAGE SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to cancel a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated October 23, 2018 ("10 Day Notice").

The tenant and an agent for the landlord ("agent") attended the teleconference hearing and were affirmed. The hearing process was explained to the parties and an opportunity to ask questions was provided to the parties. I have considered only the documentary evidence that was served in accordance with the Residential Tenancy Branch Rules of Procedure ("Rules"). In addition, only evidence relevant to the issues and my findings below have been described in this decision.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties were advised that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Background and Evidence

A copy of the tenancy agreement was not submitted in evidence. The parties agreed that a month to month tenancy began on February 1, 2013. The parties also agreed that monthly rent is geared towards the tenant's income and that originally the tenant's portion of rent was \$363.00 and is currently \$550.00 per month. Rent is due on the first day of each month. The tenant confirmed receiving the 10 Day Notice on October 23, 2018. The tenant disputed the 10 Day Notice within the required 5 day timelines under section 46 of the *Act* by filing to dispute the 10 Day Notice on October 25, 2018. The 10 Day Notice states that \$551.00 in unpaid rent was due on October 1, 2018. The tenant stated that he has not paid rent for October, November or December of 2018 due to what he described were emergency repairs that were not

completed by the landlord. The tenant admitted that he has not filed an application for emergency repairs and does not have authorization from an arbitrator to withhold any rent.

The effective vacancy date listed on the 10 Day Notice was November 3, 2018 which has passed. The tenant continues to occupy the rental unit. The agent stated that the landlord is not seeking a two-day order of possession and that an order of possession effective for December 15, 2018 at 1:00 p.m. is requested to provide the tenant additional time to vacate the rental unit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice – The landlord issued a 10 Day Notice dated October 23, 2018 which the tenant confirmed receiving on October 23, 2018. Section 26 of the *Act* applies and states:

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.

[My emphasis added]

Although the tenant disputed the 10 Day Notice on time by filing an application on October 25, 2018, I find the tenant has failed to provide sufficient evidence that they had a right to withhold any amount of rent under the *Act* and therefore, I find the 10 Day Notice to be valid. Therefore, I dismiss the tenant's application to cancel the 10 Day Notice and I uphold the 10 Day Notice issued by the landlord which had an effective vacancy date of November 3, 2018 as it is valid. I find the tenancy ended on November 3, 2018.

Section 55 of the *Act* applies and states:

Order of possession for the landlord

- 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.**

[My emphasis added]

Pursuant to section 55 of the *Act*, and taking into account that I find the 10 Day Notice complies with section 52 of the *Act*, I must grant the landlord an order of possession once I have dismissed the tenant's application to dispute the 10 Day Notice or have upheld the 10 Day Notice. Therefore, I grant the landlord an order of possession for unpaid rent **effective December 15, 2018 at 1:00 p.m.**

Conclusion

The tenant's application fails and is dismissed in full without leave to reapply.

The 10 Day Notice is upheld. The tenancy ended on November 3, 2018.

The landlord has been granted an order of possession effective December 15, 2018 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The decision will be emailed to both parties as indicated above. The order of possession will be emailed to the landlord for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: December 3, 2018

Residential Tenancy Branch