



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NANAIMO ABORIGINAL CENTRE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, LER, OLC

Introduction

On December 13, 2018, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued on December 5, 2018, to suspend or set conditions on the Landlord’s right to enter the rental unit, and for an order for the Landlord to comply with the *Act*. The matter was set for a conference call.

The Landlord was represented by two property Manager (the “Landlord”) and the Tenant, with two Tenancy Advocates (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Should the Notice issued on December 5, 2018, be cancelled?

- If not, is the Landlord entitled to an order of possession?
- Should the Landlords' right to enter the rental unit be suspended or have set conditions?
- Should the Landlords be Ordered to comply with the *Act*?

Background and Evidence

The parties agreed that the tenancy began on May 8, 2018. Rent in the amount of \$800.00 is to be paid by the first day of each month, and the Landlord is holding a \$400.00 security deposit for this tenancy.

The Landlord testified that they served the 10-Day Notice to the Tenant on December 5, 2018, by posting it to the front door of the rental unit. The 10-Day Notice has an effective date of December 18, 2018, and an outstanding rent amount of \$800.00. The Tenant submitted a copy of the Notice into documentary evidence.

During the hearing, both parties to this dispute agreed that the outstanding rent should have been recorded as \$690.00 as of the date the Notice was issued.

Both parties agreed that the Tenant had paid \$570.00 of the outstanding \$690.00 in rent on December 15, 2018, and that as of the date of this hearing the Tenant was still outstanding \$120.00 in unpaid rent for December 2018.

The Landlords are requesting that the Notice be enforced and that an order of possession be issued, as the Tenant did not pay the full rent within five days of receiving the 10-Day Notice as required. The Landlord testified that they were agreeable to the Order of Possession having an effective date of January 31, 2019.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively

presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

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.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(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 find that the Tenant received the 10-Day notice on December 8, 2018, three days after it was posted to the front door of the rental unit, pursuant to section 90 of the *Act* and that she did apply to dispute the Notice within the legislated timeline.

I accept the agreed upon testimony of both parties that the Tenant had not paid the full outstanding rent within the required five days. Therefore, I find that the Tenant is in breach of section 26 of the *Act* by not paying the rent in accordance with the tenancy agreement and I dismiss the Tenant's application to cancel the 10-Day Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

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.

I have reviewed the Notice to End Tenancy, and I find the Notice complies with section 52 of the Act and is valid and enforceable. As I have dismissed the Tenant's application, pursuant to section 55 of the Act, I must grant the Landlords an order of possession to the rental unit.

Therefore, I find that the Landlord is entitled to an order of possession, effective not later than 1:00 p.m. on January 31, 2019. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

As this tenancy is ending in accordance with the Notice, I find that there is no need to address the Tenant's additional claims to suspend or set conditions on the Landlord's right to enter the rental unit, and for an order for the Landlord to comply with the Act.

Conclusion

I dismiss the Tenant's application to cancel the Notice dated December 5, 2018.

I grant an Order of Possession to the Landlord effective not later than 1:00 p.m. on January 31, 2019. The Tenant must be served with this Order. Should the tenant 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: January 22, 2019

Residential Tenancy Branch