



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROADRUNNER MOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The corporate landlord was represented by its agent.

The landlord confirmed receipt of the tenant's application for dispute resolution dated December 14, 2018 and evidence. The tenant confirmed receipt of the landlord's evidence. Based on the testimonies I find that the landlord was served with the tenant's application package in accordance with sections 88 and 89 of the *Act* and the tenant was served with the landlord's evidence in accordance with section 88 of the *Act*.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an order of possession?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in November 2018. The monthly rent is \$840.00 payable on the first of each month.

The landlord testified that they issued a 10 Day Notice dated December 9, 2018 in person to the tenant on that date. The 10 Day Notice was submitted into evidence by the tenant and states that there is an arrear of \$840.00.

Despite having submitted a copy of the 10 Day Notice in their documentary evidence, the tenant disputed having received the notice from the landlord. The tenant filed an application for dispute resolution on December 14, 2018 but the tenant was unable to articulate what their application was in response to, as they claimed they had not been served with a 10 Day Notice.

The tenant confirmed that they had not paid the rent owed on December 1, 2018. The parties testified that the tenant subsequently provided a cheque dated December 20, 2018 to the landlord. The cheque was returned NSF. The tenant blames the bounced cheque on the landlord for failing to process the payment promptly. The parties confirmed that as of the date of the hearing the tenant has not made any payment against the rental arrears.

Analysis

The tenant disputes having been served the 10 Day Notice of December 9, 2018 despite having submitted a copy into written evidence and having filed an application to dispute a 10 Day Notice on December 14, 2018. I do not find the tenant's testimony on this point to be believable or reasonable. I accept the landlord's evidence that the 10 Day Notice of December 9, 2018 was served on the tenant on that date.

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, I find that the tenant received the 10 Day Notice on December 9, 2018, and filed a notice of dispute application on December 14, 2018 complying with the 5 day limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The parties agree that the December, 2018 rent in the amount of \$840.00 has not been received by the landlord as at the date of the hearing.

The tenant blames the landlord for failing to process their rent cheque dated December 20, 2018 in a reasonable timeframe. I do not find the tenant's submission to be supported in the evidence. The documentary evidence shows that the cheque was deposited in the landlord's account on December 20, 2018, the date of the cheque. The cheque was ultimately returned on December 31, 2018 NSF, but I find that there is no undue delay in the banks' attempt to honor the cheque. I do not find the tenant's submission to be persuasive or reasonable.

For the above reasons I dismiss the tenant's application.

Section 55 of the *Act* provides that:

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 dismissed the tenant's application, and I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end. Therefore I find that the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

Conclusion

The tenant's application is dismissed.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenant or anyone on the premises 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 24, 2019

Residential Tenancy Branch