



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

I was designated to hear this matter pursuant to section 58 of the *Residential Tenancy Act* (the *Act*). The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlord to make repairs to the rental unit pursuant to section 33.

The Respondent called into this teleconference hearing at the date and time set for the hearing of this matter. The Applicant did not, although I waited until 11:14 a.m. to enable them to connect with this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Respondent, the Respondent's two employees or representatives and I were the only persons who had called into this teleconference.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, **in the absence of any evidence presented by the applicant at this hearing, I order the application dismissed without liberty to reapply.**

As the landlord provided undisputed sworn testimony supported by the tenant's written evidence that the landlord posted the 10 Day Notice on the tenant's door on December

2, 2018, I find that the tenant was deemed served with this Notice in accordance with sections 88 and 90 of the *Act* on December 5, 2018. As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began on November 1, 2016. Monthly rent is set at \$780.00. This rent has usually been paid by way of a \$280.00 payment by the tenant and \$500.00 paid directly by the Ministry of Social Development and Poverty Reduction (the Ministry).

The landlord issued the 10 Day Notice as the Ministry's portion of the December 2018 rent, \$500.00, was not received by December 1, 2018. The landlord testified that the outstanding portion of the rent owing for December 2018, was received and accepted by the landlord for use and occupancy only on December 12, 2018, after the five day period for paying that amount had expired. The landlord also testified that they posted a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on the tenant's door on December 27, 2018, seeking an end to this tenancy by January 31, 2019. The landlord testified that they accepted the tenant's payment and a direct payment by the Ministry for this tenancy for January 2019 for use and occupancy only.

Analysis

Section 55(1) of the *Act* reads as follows:

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.*

Section 52 of the *Act* reads in part as follows:

In order to be effective, a notice to end tenancy must be in writing and must...

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45(1) or (2) [tenant's notice],
state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

I am satisfied that the landlord's 10 Day Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to an Order of Possession that takes effect by 1:00 p.m. on January 31, 2019, the date when the landlord's acceptance of payments towards this tenancy for use and occupancy only expires. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) do not vacate the rental unit by that time and date, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I dismiss the tenant's application without leave to reapply. The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on January 31, 2019. 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: January 11, 2019

Residential Tenancy Branch