



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HENG CHAO REAL ESTATE 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 an order to cancel a 10 Day Notice for unpaid rent or utilities ("Notice") pursuant to section 46.

Both parties attended the hearing. The landlord was represented at the hearing by his property manager DD ("landlord"). The hearing process was explained, and the participants were provided the opportunity to ask questions. Both parties provided affirmed testimony and were provided the opportunity to make submissions and present their evidence, orally and in documentary form.

As both parties were in attendance service of documents was confirmed. The tenant confirmed receipt of the landlord's Notice; the landlord confirmed receipt of the tenant's application for dispute resolution and evidence. Based on the testimonies of the parties, I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 10 Day Notice for Unpaid Rent be cancelled?

Background and Evidence

The tenancy began on April 1, 2014 when the rental unit was managed by a different company. Rent was initially set at \$600.00 per month payable on the first of each month and is currently \$620.00. A security deposit of \$300.00 was collected and the landlord continues to hold it.

The landlord testified that when he took over as property manager of the building in September 2018, he put notices around the building saying the rent was to be paid to his unit number 209. No individual notices were distributed to each rental unit. If rent is not received at his unit, rent is collected personally by the landlord by going to each unit. When the landlord accepts cash payments from any of the tenants, he always provides a receipt. On December 21, 2018 the landlord served the tenant with the Notice, indicating he was in arrears of \$2,500.00 for September, October, November and December 2018 rent. A copy of the Notice was entered into evidence. The landlord testified that he didn't serve the Notice to the tenant until December because he allows many of the building's tenants to pay little by little as they have the money.

On November 5, 2018 and on December 12, 2018 the landlord went to the tenant's unit, identified himself as the property manager and discussed the matter of unpaid rent with the tenant. During one of these conversations, the tenant advised the landlord that he thought his wife had paid the rent. Another time, the tenant told him that he believed his bank account had been frozen due to unusual activity and that the tenant needed to speak to his bank manager to correct it. Another time, the tenant advised the landlord that the money was slid under the door of unit 309.

Unit 309, the unit above the landlord's, is vacant and has been vacant since before this property manager took over. It has always been locked, but the landlord has a key to access to the unit. The landlord checked unit 309 and envelopes with cash were not found.

The tenant testified he was advised by the previous building manager in late August 2018 to pay the rent to unit 309. Only one notice regarding where rent was to be paid was put up and it wasn't put up until late December or early January. Since September 1, 2018, the tenant has been paying his rent by putting his cash in an envelope with his unit number on it, sliding it under the door of unit 309 and leaving without obtaining a receipt. Since he has been doing that, he assumed there has never been an issue with unpaid rent because he had never received an eviction notice. The tenant acknowledges meeting this landlord since he took over management but believed him to be the maintenance man.

Analysis

Section 46 of the *Act* provides that upon receipt of a 10 Day Notice, the tenant may, within 5 days, dispute the Notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the Notice, the landlord bears the burden to prove, on a balance of probabilities, the tenant failed to pay the rent.

In this case, the landlord has provided compelling and credible evidence that the rent was not received. His contention that rent is collected by going door to door and providing receipts is both convincing and in line with the legislation. I accept that the landlord did not find envelopes with cash in vacant unit 309.

The tenant has provided conflicting evidence as to why rent was not paid. His actions of sliding envelopes full of cash under the door of unit 309 is questionable considering he has never met anybody in unit 309. The tenant did not provide any documentary evidence to show cash was withdrawn from a bank account at the beginning of the month to corroborate his version of events. Based on evidence given by both the landlord and tenant, I find the landlord's version of events to be more credible and I dismiss the tenant's application to cancel the Notice. Pursuant to section 55(1), the director must grant to the landlord an order of possession of the rental unit if the tenant's application is dismissed. I therefore grant the landlord an Order of Possession.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant or any occupant 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: February 08, 2019

Residential Tenancy Branch