



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HESHUN ROSEWOOD SENIOR CENTRE INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC CNR FFT

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 January 4, 2019 ("10 Day Notice"), to cancel a 1 Month Notice to End Tenancy for Cause dated December 28, 2018 ("1 Month Notice"), and to recover the cost of the filing fee.

The tenant and an agent for the landlord LG ("agent") attended the teleconference hearing. The hearing process was explained to the parties and an opportunity to ask questions was provided to the parties at the start of the hearing. 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 Matters

At the outset of the hearing, the parties consented to correct the name of the landlord to the correct spelling which was done pursuant to section 64(3) of the *Act*.

In addition, the agent confirmed their email address at the outset of the hearing. The tenant confirmed that he does not have an email address. The parties were advised that the decision would be emailed to the landlord and sent by regular mail to the tenant. In addition, if the landlord is entitled to an order of possession, that will be sent by email to the landlord with the decision.

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A tenancy began February 2, 2018. Monthly rent is \$1,700.00 and is due on the first day of each month. The tenant paid a security deposit of \$850.00 at the start of the tenancy, which the landlord continues to hold.

The tenant confirmed receiving the 10 Day Notice on January 4, 2019. 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 January 7, 2019. The 10 Day Notice states that \$1,700.00 in unpaid rent was due on January 1, 2019. The parties agreed that the tenant did not have the full amount of rent as of January 1, 2019 and that even though the tenant attempted to pay \$1,000.00 of the monthly rent, the landlord stated that the entire amount was due and did not accept a partial payment. The tenant stated that he eventually paid the full \$1,700.00 amount of rent for January 2019 on either January 30th or 31st, which the agent did not dispute.

The tenant confirmed that he has not paid February 2019 rent as of the date of the hearing which was February 14, 2019.

The tenant continues to occupy the rental unit. The landlord is seeking an order of possession and does not wish for the tenancy to continue.

Based on the above, I do not find it necessary to consider the 1 Month Notice, which I will describe further below.

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 January 4, 2019, which the tenant confirmed receiving on the same date. Although the tenant disputed the 10 Day Notice on time by filing an application on January 7, 2019, I find the tenant has failed to provide sufficient evidence that they had a right to withhold any amount of rent under the *Act* or paid the full \$1,700.00 amount of rent within 5 days of being served the 10 Day Notice. Therefore, I find the 10 Day Notice to be valid and **I dismiss** the tenant's application to cancel the 10 Day Notice. I uphold the 10 Day Notice issued by the landlord which had an effective vacancy date of January 14, 2019, as it is valid.

I find the tenancy ended on January 14, 2019.

Given the above, I dismiss the remainder of the tenant's application **without leave to reapply as the tenancy has ended**. 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.

[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 two (2) days after service on the tenants**.

I find it was not necessary to consider the 1 Month Notice or the remainder of the application as the tenancy has ended.

I do not grant the filing fee as a result.

Conclusion

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

The 10 Day Notice is upheld and the tenancy ended on January 14, 2019.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The decision and order of possession will be emailed to the landlord and the decision will be sent by regular mail to the tenant.

The filing fee is not granted.

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: February 14, 2019

Residential Tenancy Branch