



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1097373 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC, OPR-DR

Introduction

This hearing dealt with cross applications filed by the parties. On January 15, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”) and seeking to cancel a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Act*.

On January 18, 2019, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession for Unpaid Rent pursuant to Section 46 of the *Act*.

The Tenant did not attend the hearing; however, the Landlord did attend. All in attendance provided a solemn affirmation.

The Landlord advised that it was her belief that the Tenant was served with the Notice of Hearing package and evidence; however, she is not sure. Based on this testimony, I am not satisfied that the Tenant was served this package. However, as she confirmed that she received the Tenant’s Notice of Hearing package, I am satisfied that the hearing could continue and that the matter of the notices could still be addressed.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I

must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the notices cancelled?
- If the Tenant is unsuccessful in cancelling the notices, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord stated that the tenancy started on August 1, 2016 and that rent was currently established at \$845.00 per month, due on the first of each month. A security deposit of \$422.50 and a pet damage deposit of \$422.50 were paid.

The Landlord advised that the Tenant did not pay January 2019 rent, so the Notice was served to the Tenant in person on January 10, 2019. The Notice indicated that \$845.00 was outstanding on January 1, 2019 and that the effective end date of the Notice was January 24, 2019.

In addition, the Landlord advised that the Tenant was served a One Month Notice to End Tenancy for Cause on January 8, 2019 by being posted on the Tenant's door. The reason the Landlord checked off on this notice was that the "Tenant is repeatedly late paying rent." The effective date of this notice was February 28, 2019. She stated that the Tenant would pay rent by electronic transfer, that she has been late paying rent for 11 out of the last 12 months, and that she had been warned in writing to correct these late payments. She stated that the Tenant advised her that she was disputing the notices merely to extend her ability to maintain possession of the rental unit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant received the Notice on January 10, 2019. According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the fifth day fell on Tuesday January 15, 2019, the Tenant must have paid the rent in full or disputed the Notice by that date at the latest. The undisputed evidence is that the Tenant made her Application on January 15, 2019. However, there is no evidence before me that permitted the Tenant to withhold the rent.

As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenant being served the Notice. Moreover, the Tenant did not establish that she had a valid reason for withholding the rent pursuant to the *Act*. As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

As an Order of Possession was granted on the Notice, it was not necessary to consider the reasons and testimony with respect to the One Month Notice to End Tenancy for Cause.

Conclusion

I dismiss the Tenant's Application and I grant an Order of Possession to the Landlord **two days after service of this Order** on the Tenant. 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: February 26, 2019

Residential Tenancy Branch