



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

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;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlord appeared at the hearing. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that he served the Tenant's Application for Dispute Resolution hearing package ("dispute resolution hearing package"), along with his evidence, to the landlord by way of registered mail. The landlord confirmed receipt of the dispute resolution hearing package and the tenant's evidence. Therefore, I find that the landlord has been served with the notice of dispute resolution package, in accordance with section 89 of the Act.

The landlord did not submit any evidence to the tenant's file for consideration by the Arbitrator, nor did the landlord serve any evidence to the tenant.

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 is compliant with the *Act*.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession, pursuant to Section 55 of the Act? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties agreed that the tenancy began on February 16, 2016. The monthly rent was determined to be due on the first day of each month, and the monthly rent was set at \$950.00. The current monthly rent owed is \$1,024.00. The tenant provided a security deposit in the amount of \$475.00 which continues to be held by the landlord. The tenant provided as evidence a copy of a written tenancy agreement which confirms the details provided by the parties.

The landlord testified that the tenant has not paid rent for the month of January 2019, and that the 10 Day Notice was issued as a result of the non-payment for that month.

The landlord issued a 10 Day Notice, dated January 06, 2019, which the landlord states was served to the tenant on January 06, 2019, for \$1,028.00 in unpaid rent due on January 01, 2019, with a stated effective vacancy date of January 16, 2019. The landlord testified that the 10 Day Notice was served to the tenant by way of posting it to the door of the rental unit on January 06, 2018.

The landlord testified that the tenant's routine method by which to pay rent is to deposit the rent to the landlord's bank account and then submit a deposit receipt issued by the bank to prove that the tenant completed the transaction. The deposit receipt issued by the bank depicts the sum of money deposited to the landlord's bank account and the date on which the transaction was completed. The tenant then submits the receipt to the landlord by placing the receipt in the landlord's locked and secured mailbox located in the lobby of the building, which is easily accessed by all occupants.

The landlord stated that the tenant failed to pay the rent due for January 2019 by the first day of the month. The landlord provided that on January 04, 2019, he discovered that the tenant had placed in the landlord's mailbox a deposit receipt from the tenant and immediately noticed that the receipt was deficient in form and content.

The landlord testified that not all fields of the upper portion of the receipt were legible, and that the manner in which the receipt presented was such that it appeared the date may have been deliberately concealed, redacted, or otherwise covered via the use of a stationery substance commonly referred to as "white-out".

The landlord accessed his bank account and confirmed that for the month of January 2019, the rent due for all other units in the building had been accounted for, both by way of the landlord's records and the information provided in the landlord's bank account. The landlord confirmed that the amount missing from his bank account for total rent owed for January 2019, and as supported by the landlord's rental records for the building, confirmed that a sum of money equivalent to the sum owed by the tenant as rent for January 2019 was not accounted for.

The landlord was not satisfied that the receipt provided by the tenant proved that rent for January 2019 was paid, as it did not satisfy the requirements that the parties had agreed to—specifically, the receipt did not contain a date to prove the date on which the money was purportedly deposited.

The landlord testified that he reproduced a copy of the receipt on a larger paper, by way of photocopy, and wrote instructions to the tenant that the receipt did not contain a date. The landlord stated that he asked the tenant to provide proof that the January 2019 rent had been paid and to provide a deposit receipt which included the date and sum of money deposited to the landlord's account, or, in the

alternative, to provide payment of rent in another fashion. The landlord stated that he delivered the document with these instructions to the tenant on January 04, 2018.

The landlord testified that he did not receive from the tenant any subsequent response to the landlord's query regarding the deficient deposit receipt and that the tenant did not provide rent for January 2019. The landlord stated that on January 06, 2019, his records confirmed that the tenant did not pay the outstanding rent. The landlord then decided to issue a 10 Day Notice to the tenant on January 06, 2019.

The landlord stated that he checked his records and bank account again on January 26, 2019, and before the dispute resolution hearing, and confirmed that the tenant had not provided any payment toward rent owed for January 2019 and did not provide a deposit receipt which included a date in response to the landlord's query delivered on January 04, 2019.

The tenant testified that for the past 14 months he has been providing rent by depositing cash directly to landlord's deposit account and then providing a copy of the deposit receipt to the landlord's secure mailbox located in the lobby of the building.

The tenant testified that at some point in late December, he paid rent for the month of January 2019 by depositing a cash sum of \$1,025.00 directly into the landlord's bank account and then placing the deposit receipt in the landlord's mailbox. The tenant testified that he did not keep a copy of the receipt for himself and that the only copy of the receipt was the copy placed in the landlord's mailbox.

When asked for the date on which he deposited the money to the landlord's bank account, the tenant could not recall the date, and said that he may have done so on either December 29, 2018 or December 30, 2018. In response, the landlord stated that his bank account records do not show a deposit made around these dates in the sum of \$1,025.00 as purported by the tenant.

The tenant testified that he acknowledged that the receipt did not have a clear date on it, and that it "may have rubbed off somehow". The tenant later provided an alternate explanation and provided, in a tone that sounded in the form of a query, that "maybe water spilled on it?" The tenant did not provide any reason as to why the receipt presented such that the date may have been deliberately redacted or concealed.

The tenant refuted the landlord's testimony, whereby the landlord stated that the date is not decipherable at all. The tenant provided that the tenant's copy of the receipt contains a partially decipherable letter "D" in the field where the date is to be listed on the receipt, and may differ from the version the landlord has.

The tenant testified that on January 06, 2019, he received under his door the document from the landlord, which contained a photocopy of the receipt along with the landlord's instructions to provide rent for January 2019. The tenant stated the landlord had written on the paper that the receipt had no clear date.

The tenant was asked to clarify his earlier testimony, whereby the tenant testified that he placed the only copy of the receipt into the landlord's mailbox. The tenant was asked how he came into possession of a copy of the receipt if the landlord was given the only copy of the receipt. In response, the tenant testified that the landlord provided him a photocopy of the receipt as part of the document that the landlord slipped under his door which contained the landlord's instructions.

The tenant was then asked to clarify another segment of his testimony, as the tenant had earlier stated that the copy of the receipt in the tenant's possession lists a partially decipherable "D" for December in the date field, and that the landlord may have a copy of the receipt that presents otherwise.

The tenant then confirmed that there is only one version of the receipt, which is the same version that the tenant placed in the landlord's mailbox and provided as evidence as part of his application for dispute resolution, and the same version that was returned to the tenant by way of the landlord's photocopied document provided to the tenant on January 06, 2019.

When asked why he would assert that he may have a version of the receipt that included a partially decipherable "D" to indicate a portion of the date, the tenant did not provide a response. At this point, the landlord interjected to assert that the tenant was providing untruthful testimony in an attempt to fraudulently mislead the Arbitrator to believe that perhaps the receipt did, at one point, contain the word December in the address field, which was not decipherable on the receipt.

Analysis

Section 90 of the Act provides that because the 10 Day Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the Act, I find that the tenant is deemed to have received the Notice on January 09, 2018, three days after its posting.

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

Section 46 of the Act provides the following:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

Where a tenant applies to dispute a 10 Day Notice, or in a matter in which the landlord seeks an Order of Possession, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the

10 Day Notice to end a tenancy for unpaid rent is based. Therefore, in the matter before me, the burden of proof rests with the landlord.

However, when one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events without any form of evidentiary corroboration, the party making the claim (and bearing the burden of proof) has not met the burden on a balance of probabilities and the claim fails.

In the matter before me, I find that, on a balance of probabilities, it is more likely than not that the landlord's testimony outlining his pattern of collecting and accounting for rental payments owed from the occupants of the building in which the rental unit is located, and in determining that the tenant did not pay rent for the month of January 2019, represents a factual and likely depiction of the events preceding the landlord's decision to issue the 10 Day Notice.

I find that the landlord was consistent in his testimony, and that his testimony fit with the evidentiary material provided, such as the indecipherable date of the deposit receipt, which does not prove that the tenant paid rent for the month of January 2019, and that the landlord's own bank account does not show a deposit made around the dates claimed by the tenant.

I prefer the consistency and the logic of the landlord's testimony. I find that the tenant seemed hesitant and uncertain at times when providing testimony, and sometimes retracted a statement initially provided and needed time to deliberate when providing a response to seemingly straightforward and simple questions.

At times, the tenant provided initial testimony and then provided subsequent testimony which served to contradict his earlier testimony and cast doubt as to the validity and reliability of his testimony.

For example, at one point in his testimony, the tenant stated that there was only one copy of the deposit receipt, which was left in the landlord's mailbox. The tenant later testified that he was in possession of a copy of the receipt that depicted a partially decipherable "D" as representing the word December in the field where the date would be listed on the receipt. The tenant later retracted his statement claiming that he was in possession of a version of the receipt that differed than the version held by the landlord or placed on file, and then provided subsequent testimony to state that there had only ever been one version of the receipt.

When questioned as to why he would assert that he had a different copy, the tenant was not able to demonstrate why he would provide misleading testimony. When questioned as to why the receipt presented such that it appeared the date may have been deliberately concealed, redacted, or otherwise covered via the use of a stationery substance commonly referred to as "white-out", the tenant was not able to provide a believable response. Instead, the tenant replied that the date "may have just rubbed off" and then later attributed it to water damage. When asked why it appeared that only specifically the date field of the receipt was completely rendered illegible, while other text of the receipt did not present with similar issues, the tenant was not able to provide a response.

The tenant was asked why he would assert that the remnants of the letter "D" were legible on the receipt, when, in fact, the tenant agreed that all parties had the same version of the receipt in their possession,

which did not depict any semblance of the letter D, the tenant skirted around the question and changed the course of his testimony.

With respect to the tenant's assertion that the remnants of the capital letter "D" appeared on the receipt in the field where the date is to be indicated, the landlord testified that the remnants of a letter "N" are visible, and that the slightly visible ink depicts that the remnants of the letter that once appeared there does not indicate a circular capital "D"; rather, it depicts a capital letter "N". I accept the landlord's testimony with respect to the letter that appears in the date field of receipt, and find that it is likely that that field depicts a capital letter "N", and that the manner in which the remnant of text presents rules out the possibility of a capital letter "D".

Based on the foregoing, I find that the credibility of the tenant's sworn testimony, whereby he asserts that the receipt depicts a date that once read "December", is brought into question.

I find that the tenant's testimony was inconsistent and that he changed his testimony to cater to the questions asked of him. I find that, as a whole, the tenant's testimony lacks an air of reality. I find the culmination of observations with respect to the tenant's testimony could be viewed as an attempt by the tenant to present misleading information.

As a result, I prefer the landlord's testimony, in which he stated that he thoroughly checked his rental records and bank account records and determined that the tenant did not pay rent for the month of January 2019. I accept the landlord's testimony that after checking his bank account records, he found no deposit in the sum of \$1,025.00 deposited on either December 29, 2018 or December 30, 2018, as claimed in the tenant's testimony.

I find that after receiving the landlord's note, on January 04, 2019, in which the landlord asked the tenant to verify the date of the receipt to prove that rent had been paid, and after receiving the 10 Day Notice, the tenant had various options available to him to approach the landlord to prove that he had paid the rent in the manner that he claimed.

If the tenant had deposited money directly into the bank account on either of the dates claimed by the tenant (December 29, 2018 or December 30, 2018), the tenant could have simply asked the landlord to check his bank account records.

If the tenant did deposit money directly into the landlord's bank account for the purpose of providing a rental payment for the month of January 2019, and was subsequently left in possession of a deficient or damaged receipt, the tenant had the option of simply visiting any branch of the financial institution with which the landlord holds that particular deposit account to procure a replacement receipt, as the financial institution has the means to readily provide that information. If the bank could not disclose that information to a non-account holder, then the tenant could have directed the account-holder, in this case, the landlord, to verify the deposit transaction with the bank.

Instead, the tenant did not undertake any such action, or any action at all, to prove that he had deposited the sum of money into the landlord's account. Instead, the tenant continued to rely on a receipt that, by his own admission, was deficient and contained indecipherable portions which did not prove the date on which the tenant provided payment, or whether the tenant provide payment at all.

Based on the testimony provided by the parties, I find that the tenant failed to prove that he paid rent for the month of January 2019.

After weighing the evidence and testimony provided by both parties, I accept the landlord's evidence and find that after receiving the 10 Day Notice, the tenant did not pay the rent owed in full within the five days granted under section 46(4)(a) of the Act. I further find that the tenant failed to prove that he had grounds to withhold payment of the rent in accordance with section 26(1) of the Act.

Accordingly, I dismiss the tenant's application to cancel the 10 Day Notice dated January 06, 2019.

Section 55 of the Act provides that if a tenant applies to dispute a notice to end tenancy, an Arbitrator is required to issue an Order of Possession if the tenant's application is dismissed, and if the notice complies with section 52 of the Act

Section 52 of the Act outlines the form and content required for a notice to end tenancy issued under the Act. I have reviewed the 10 Day Notice dated January 06, 2019 and find it complies with section 52 of the Act in form and content.

I have dismissed the tenant's application to dispute the 10 Day Notice and found the 10 Day Notice complies with section 52 of the Act. Therefore, pursuant to section 55 of the Act, I issue the landlord an Order of Possession for the rental unit.

I also note that I accept the testimony of the landlord that the tenant had no authority to withhold rent and that the tenant never paid the outstanding rent. Therefore, section 46(3) and 46(4)(a) of the Act do not apply.

I grant the landlord an Order of Possession effective two days after service on the tenant, as the effective date of the 10 Day Notice has passed and the tenant has not paid rent for the month of January 2019.

Conclusion

The tenant's application is dismissed, in its entirety, without leave to re-apply.

Pursuant to section 55 of the Act, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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: February 08, 2019

Residential Tenancy Branch