



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, OLC

Introduction

On December 6, 2018, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), to suspend or set conditions on the Landlords’ right to enter the rental unit, and for an order for the Landlord to comply with the *Act*. The matter was set for a conference call.

Both Landlords and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Should the Notice issued on December 6, 2018, be cancelled?

- If not, is the Landlord entitled to an order of possession?
- Should the Landlords' right to enter the rental unit be suspended or have set conditions?
- Should the Landlords be Ordered to comply with the *Act*?

Background and Evidence

The parties agreed that the tenancy began on November 1, 2018. Rent in the amount of \$925.00 is to be paid by the first day of each month, and the Landlord is holding a \$462.50 security deposit and a \$250.00 pet damage deposit for this tenancy.

The Landlords testified that they served the 10-Day Notice to the Tenant on December 6, 2018, by personally serving the Notice to the Tenant. The 10-Day Notice has an effective date of ~~November 18~~ December 16, 2018, and an outstanding rent amount of \$1,500.00.

The Landlords also testified that the Tenant had not paid the outstanding rent on the Notice for December 2018 and had also not paid the rent for January 2019.

The Tenant testified that she had not paid the rent for December 2018 or January 2019.

The Landlords are requesting that the Notice be enforced and that an order of possession be issued, as the Tenant did not pay the rent within five days of receiving the 10-Day Notice as required.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

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.
- (5) 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
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

I find that the Tenant received the 10-Day notice on December 2, 2018, and that she did apply to dispute the Notice within the legislated timeline.

I accept the agreed upon testimony of both parties that the Tenant had not paid the outstanding rent as stated on the 10-Day Notice within the required five days. Therefore, I find that the Tenant is in breach of section 26 of the Act by not paying the rent in accordance with the tenancy agreement and I dismiss the Tenant's application to cancel the 10-Day Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

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.

I have reviewed the 10-Day Notice to End Tenancy, and I find the 10-Day Notice complies with section 52 of the Act. As I have dismissed the Tenant's application, pursuant to section 55 of the Act, I must grant the Landlords an order of possession to the rental unit.

I find that the Landlords are entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenant. This order may be filed in the Supreme Court

and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

As this tenancy is ending in accordance with the 10-Day Notice, I find that there is no need to address the Tenant's additional claims to suspend or set conditions on the Landlords' right to enter the rental unit, and for an order for the Landlord to comply with the *Act*.

Conclusion

I grant an **Order of Possession** to the Landlord effective **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: January 21, 2019

Residential Tenancy Branch

Correction Dated: March 1, 2019