



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR ERP RP

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; and
- an order to the landlord to make repairs to the rental unit pursuant to section 33.

The tenant was represented by an agent in this hearing, who wished to be referred only by his first name. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence. The landlord did not submit any written evidence for this hearing.

The tenant confirmed receipt of the 10 Day Notice dated March 1, 2019, which was posted on his door the same date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on March 3, 2019, 3 days after posting.

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?

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Background and Evidence

This month-to-month tenancy began 14 years ago. The monthly rent is currently set at \$1,025.00. There is no written tenancy agreement for this tenancy. The landlord testified that rent was payable on the first of every month, which the tenant disputes. The tenant testified that he has had difficulty making arrangements to pay rent during the entire 14 years, which the tenant testified must be paid in cash to the landlord's agent DS. The tenant testified that he was always issued receipts for his payments, but has always had to chase the landlord down in order to make payments. The tenant testified that he had paid rent up to February 2019, but cannot remember specific details due to his brain injury.

The landlord testified that the last payment received by the tenant was received on November 30, 2018 for the month of December 2018. The landlord testified that rent was always payable on the first of the month, and that it was payable through DS, whose number the tenant had. The landlord served the tenant with the 10 Day Notice on March 1, 2019 as the tenant has failed to pay any rent for 2019.

DS testified in the hearing and provided the specific amounts paid in 2017 and 2018 for rent. DS testified that the tenant has not paid any rent for 2019. DS testified that the tenant was to attend the office on January 15, 2019 and on January 18, 2019, but did not show up. It was undisputed by both parties that receipts were always issued for rent payments.

The tenant testified that there were a number of repairs that required attention, but were ignored by the landlord. The tenant testified that in the entire 14 years of his tenancy, the landlord has failed to perform repairs as requested by the tenant, including repairs to the leaking pipes, black mould, and shed. The tenant testified that the landlord has not mowed the lawn in 9 years.

The landlord disputes having received any requests for repairs from the tenant. The landlord testified that the house was renovated before the tenant moved in, and the tenant had broken the windows in the rental unit himself.

Analysis

Section 26(1) of the *Act* requires the tenant to pay rent when due under the tenancy agreement, “whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent”.

The tenant testified that he had paid rent up to February 2019, while the landlord testified that the tenant has not paid any rent for 2019. It was undisputed by both parties that the tenant was always issued receipts for his payments by DS. Despite the tenant’s testimony that he had to chase the landlord down in order to make his payments, the tenant’s own testimony contradicts this as he testified that he was paid up to February 2019. I am not satisfied that the tenant provided sufficient evidence to show that the landlord has made it difficult for the tenant to pay his rent. Furthermore, it was undisputed that the tenant was provided receipts for all his payments, but I find that the tenant has not provided any proof of any of the payments made to the landlord.

I find the landlord’s testimony credible that the tenant has failed to pay the outstanding rent for January and February 2019. Although the landlord included the March 2019 rent in the outstanding amount on the 10 Day Notice, I note that this does not invalidate the 10 Day Notice. I find that the Notice still complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form.

I, therefore, dismiss the tenant’s application to cancel the landlord’s Notice to End for Unpaid Rent.

Section 55(1) of the *Act* reads as follows:

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.

As the tenant has not moved out, and the corrected, effective date of the 10 Day Notice has passed, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*.

As this tenancy has come to an end, I dismiss the remainder of the tenant's application for repairs without leave to reapply.

Conclusion

I dismiss the tenant's application to cancel the landlord's 10 Day Notice. I find that the landlord's 1 Month Notice is valid and effective as of March 14, 2019. I, therefore, grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant and any occupant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

The remainder of the tenant's application is dismissed without leave to reapply.

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: April 11, 2019

Residential Tenancy Branch