



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GARDEN CONSTRUCTION LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR

Introduction

This hearing was held pursuant to an Application for Dispute Resolution (“application”) by the tenant seeking remedy under the *Residential Tenancy Act* (“Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 4, 2019 (“10 Day Notice”).

The tenant and an agent for the landlord OB (“agent”) attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were affirmed and were provided with the opportunity to submit documentary evidence prior to this hearing. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Both parties confirmed having been served with documentary evidence from the other party and that they had the opportunity to review that evidence.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issue to be Decided

- Should the 10 Day Notice be cancelled?

Background and Evidence

The parties confirmed that the tenancy began on November 15, 2014. The parties agreed that monthly rent of \$1,050.00 is due on the first day of each month. The parties confirmed that while a written tenancy agreement was signed between the parties, a copy of the tenancy agreement was not submitted in evidence.

The tenant confirmed that he received the 10 Day Notice dated April 4, 2019 on April 4, 2019. The tenant did not file their application for dispute resolution until April 10, 2019. The 10 Day Notice indicates that \$3,615.00 in rent was owed as of April 1, 2019 and the effective vacancy date is listed as April 17, 2019.

The agent testified that no money for use and occupancy has been accepted from the tenant for May 2019. The tenant claims that he paid the landlord for use and occupancy for May 2019. The tenant was advised that any payments to the landlord before the hearing would be applied towards the oldest debt. The agent confirmed that he accepted money from the tenant for money owed only, that the debt for unpaid rent has not been paid in full and that no money was accepted for use and occupancy for May 2019. In addition, the agent did not want to continue the tenancy due to the amount of rent owed by the tenant.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice - The tenant did not apply for dispute resolution until April 10, 2019. Section 46 of the *Act* applies and states:

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.**

[Emphasis added]

Based on the above, I find the tenant had until April 9, 2019 to dispute the notice and failed to apply for dispute resolution until April 10, 2019, which is one day after the deadline under the *Act*. Furthermore, the tenant confirmed he has not paid the full amount owing on the 10 Day Notice and instead attempted to pay May 2019 rent instead, which I find goes towards the oldest debt owing and not May 2019 use and occupancy. Therefore, I find the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted the 10 Day Notice effective vacancy date of April 17, 2019. The tenant failed to vacate; however, and continues to occupy the rental unit.

Based on the above, **I dismiss** the tenant's application in full, without leave to reapply, as the tenant applied after the effective date of the 10 Day Notice. Section 55(1) 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]

Therefore, taking into account that I find the 10 Day Notice complies with section 52 of the *Act* as it is in the approved form and is signed and dated and correctly completely, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

Conclusion

I dismiss the tenant's application in full, without leave to reapply, due to insufficient evidence.

The tenancy ended on April 17, 2019, which is the effective vacancy date of the 10 Day Notice.

The landlord is granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. This decision will be emailed to both parties. The order of possession will be emailed to the landlord for service on the tenant.

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: May 14, 2019

Residential Tenancy Branch