



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), for monetary compensation for unpaid rent and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The application was initially filed under the Direct Request process and was adjourned to a participatory hearing through an interim decision dated March 28, 2019 to confirm service of the 10 Day Notice. At the teleconference hearing on May 16, 2019, the Tenant and an agent for the Landlord (the “Agent”) were present for the duration of the hearing and were affirmed to be truthful in their testimony. A letter signed by Landlord was submitted into evidence dated February 22, 2019 in which the Landlord provided permission for the Agent to act on behalf of the Landlord.

The Tenant confirmed receipt of the interim decision as well as a copy of the Notice of Dispute Resolution Proceeding package regarding the participatory hearing. The Tenant also confirmed that a copy of the Landlord’s evidence was received and that he did not submit any documentary evidence prior to the hearing.

Preliminary Matters

At the hearing, the Agent withdrew the Landlord’s monetary claim for unpaid rent. The Application for Dispute Resolution was amended to remove the monetary claim, pursuant to Section 64(3)(c) of the *Act*. Therefore, this decision will be regarding the Landlord’s application for an Order of Possession, as well as the request for the

recovery of the filing fee. The Landlord is at liberty to reapply for monetary compensation for unpaid rent.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were also confirmed by the tenancy agreement submitted into evidence. The tenancy began on December 1, 2018. Rent in the amount of \$980.00 is due on the first day of each month. A security deposit of \$490.00 was paid at the outset of the tenancy.

The Agent testified that he served the Tenant in person with a 10 Day Notice on February 26, 2019. The Tenant confirmed receipt of the 10 Day Notice on this date.

The 10 Day Notice was submitted into evidence and states that \$980.00 was unpaid as due on February 1, 2018. The effective end of tenancy date of the 10 Day Notice was stated as March 6, 2019.

The Agent testified that the Landlord has not received any amount towards rent owing for February, March, April or May 2019. He also stated that the Landlord did not receive any notification that the Tenant had applied to dispute the notice.

The Tenant testified that he did not apply to dispute the 10 Day Notice. However, he stated that he had a verbal agreement with the Landlord to pay the rent on March 5, 2019, despite this being more than the 5 days allowable under the *Act*. The Agent stated that he was not aware of any verbal arrangement between the Tenant and Landlord and that he had no information before him that the Tenant had applied to dispute the 10 Day Notice or had paid any amount towards the outstanding rent.

The Agent stated that they are seeking an Order of Possession for May 31, 2019.

Analysis

Neither party disputed that the Tenant was served a 10 Day Notice under Section 46(1) of the *Act* as rent was not paid as due on February 1, 2019. Therefore, I find that the Landlord was within their rights to serve the Tenant with a 10 Day Notice. However, the parties were not in agreement as to whether the 10 Day Notice was cancelled with payment of the outstanding rent.

The Agent for the Landlord stated that no rent has been received since service of the 10 Day Notice, which leaves rent owing for February, March, April and May 2019. The Tenant stated that he paid the rent owing for February 2019 on March 5, 2019 due to a verbal agreement with the Landlord.

However, due to the absence of any information that would confirm that the Landlord had agreed that the Tenant could pay rent late, I find that Section 46(4) and 46(5) of the *Act* applies as follows:

- (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 had the responsibility to know his rights under the *Act* after receiving a 10 Day Notice. I also note that the Tenant confirmed receipt of the 10 Day Notice on February 26, 2019 and the 10 Day Notice provides information on the 5-day timeframe to dispute the notice or pay the rent owing.

As the Landlord's agent withdrew the monetary claims, I do not find it necessary to determine whether or not there is still an amount of rent outstanding. However,

regardless of the amount of rent that may have been paid on March 5, 2019, I find that this was 7 days after receipt of the 10 Day Notice and therefore not within the 5-day timeframe allowable under Section 46(4) of the *Act*.

Therefore, as I accept the testimony of both parties that the Tenant did not apply to dispute the notice and that the outstanding rent was not paid within 5 days of receiving the 10 Day Notice, I find that Section 46(5) of the *Act* applies. Accordingly, the Tenant is conclusively presumed to have accepted that the tenancy ends.

Upon review of the 10 Day Notice dated February 26, 2019 I find the form and content to comply with Section 52 of the *Act*. Pursuant to Section 55(2) of the *Act* I find that the Landlord is entitled to an Order of Possession. I accept the testimony of the Agent that they are seeking an order for the end of May 2019 and therefore grant an Order of Possession effective May 31, 2019. Pursuant to Section 72, I award the recovery of the filing fee in the amount of \$100.00. The Landlord may retain \$100.00 from the security deposit as satisfaction of this fee.

Conclusion

I grant an Order of Possession to the Landlord effective **May 31, 2019 at 1:00 pm**. This Order must be served 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.

Pursuant to Section 72 of the *Act*, the Landlord may retain \$100.00 from the security deposit as recovery of the filing fee paid for the Application for Dispute Resolution.

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: May 17, 2019

Residential Tenancy Branch