



Dispute Resolution Services

Page: 1

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;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The tenant confirmed in their application for dispute resolution that they were handed the 10 Day Notice by the landlord on March 26, 2019. The landlord provided similar sworn testimony to that effect at this hearing. On this basis, I find that the tenant was served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that on April 4, 2019, they received a copy of the tenant's dispute resolution hearing package, I find that the landlord was

duly served with this package in accordance with section 89 of the *Act*. The landlord gave undisputed sworn testimony that they sent the tenant a copy of their written evidence package by registered mail on May 1, 2019. I accept that this evidence was provided to the tenant in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any orders be issued with respect to this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties signed a one-year fixed term tenancy on February 28, 2018 for a tenancy that was to run from March 1, 2018 until February 28, 2019. Monthly rent is set at \$2,150.00, payable in advance on the first of each month, plus hydro and heat. The landlord continues to hold the tenant's \$1,075.00 security deposit paid on March 1, 2018.

The landlord's 10 Day Notice, entered into written evidence by the parties showed \$2,150.00 in unpaid rent owing for March 2019, as of March 26, 2019. At the hearing, the landlord gave undisputed sworn testimony that the tenant remains in the rental unit and has not made any payments for rent or utilities since the 10 Day Notice was issued.

Analysis

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is 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." Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent "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." Section 46(2) of the *Act* requires that "a notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 46 (4) (b) of the *Act* provides that upon receipt of a 10 Day Notice to end tenancy the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch (the RTB). I find that the tenant's application was not filed with the RTB until April 2, 2019, the seventh day after it was handed to the tenant. On this basis, the tenant has failed to file the application for dispute resolution within the five days of service granted under section 46 (4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 46 (5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, being April 5, 2019.

In addition, the tenant did not attend this hearing and provided no evidence either written or oral to dispute the landlord's assertion that rent for March 2019 was not paid within five days of the tenant's receipt of the 10 Day Notice.

Accordingly, in the absence of any attendance at this hearing by the Applicant, written evidence to contradict the landlord's evidence and sworn testimony, and the tenant's failure to file an application for dispute resolution within the five day time period established in section 46(4)(b) of the *Act*, I order the application dismissed without liberty to reapply.

I am satisfied that the landlord's 10 Day Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I dismiss the tenant's application without leave to reapply.

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: May 17, 2019

Residential Tenancy Branch