



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mamele'awt Qweesome Housing
Society and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice), pursuant to section 46 of the *Act*.

Only the landlord's agent A.T. who spoke on behalf of the housing society landlord, and is herein referred to as "the landlord", attended at the date and time set for the hearing of this matter. The tenant, who was the applicant in this matter, did not attend this hearing, although I left the teleconference hearing connection open until 9:41 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to reapply.

Accordingly, in the absence of any evidence or submissions from the tenant in this matter, I order the tenant's application in its entirety dismissed without liberty to reapply.

Preliminary Issue – Amendment to Tenant’s Application for Dispute Resolution

At the outset of the hearing, the landlord provided the correct legal name of the housing society, as the tenant had only provided the tenant’s Application. As well, the landlord noted that the tenant failed to include the rental unit number as part of the dispute address for this matter. Pursuant to my authority under section 64(3)(c) of the *Act*, I corrected the landlord’s legal name and added the rental unit number to the dispute address on the tenant’s Application.

Preliminary Issue - Procedural Matters

Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant’s Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession on the basis of the 10 Day Notice to End Tenancy?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The landlord testified that there was a written tenancy agreement however neither party uploaded a copy of it to the dispute website. Therefore, the landlord provided the following unchallenged testimony regarding the terms of the verbal tenancy agreement:

- This month-to-month tenancy began September 1, 2015.
- Monthly rent of \$541.00 is payable on the first of the month.
- The tenant paid a security deposit of \$500.00 at the beginning of the tenancy, which continues to be held by the landlord.

The landlord testified that the tenant did not pay her rent on April 1, 2019. On April 10, 2019, the landlord issued a 10 Day Notice on that day by posting the notice to the

tenant's door. In support of her testimony, the landlord submitted a Proof of Service signed by a witness to the posting of the 10 Day Notice.

A copy of the 10 Day Notice was submitted into evidence by the parties. The notice is dated April 10, 2019 and states that \$541.00 in rent was not paid when due on April 1, 2019. The notice provides an effective vacancy date of April 20, 2019. The tenant filed an Application to dispute the notice on April 15, 2019.

The landlord testified that in addition to April 2019 rent, the tenant has failed to pay rent for the months of May and June 2019. The landlord testified that she posted a second 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door on May 2, 2019.

The landlord confirmed that she has not received any full or partial rent payments from the tenant for the months of April, May and June 2019, as supported by a copy of the rent ledger submitted into evidence. The landlord testified that it appeared that the tenant was moving out of the rental unit as of the date of the hearing, however, vacant possession had not yet been returned to the landlord and as such the landlord is seeking an Order of Possession.

Analysis

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. If a tenant fails to pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing proper written notice to end tenancy using a 10 Day Notice to End Tenancy.

A tenant who receives a 10 Day Notice to End Tenancy under section 46 of the *Act* has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

In this case, I find that the tenant was served with a 10 Day Notice on April 10, 2019 and filed an application to dispute the notice on April 15, 2019. Accordingly, the tenant complied with the five-day time limit provided by section 46 of the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based.

As the tenant did not attend the hearing, based on the unchallenged testimony of the landlord's agent, and the documentary evidence submitted, I find that the tenant was obligated to pay monthly rent in the amount of \$541.00 on the first day of the month, as established in their agreed upon tenancy agreement.

Further to this, I find that there is no evidence before me to conclude that the tenant had any other right to withhold rent from April to June 2019, and therefore the tenant remained obligated to pay rent for these months when due. I find no evidence before me to suggest that the tenant paid any rent for these months.

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord has proven the grounds for issuing the 10 Day Notice based on unpaid rent.

As the tenant's application to dispute a landlord's notice to end tenancy is dismissed, and the landlord has proven the grounds for issuing the notice to end tenancy, section 55 of the *Act* requires me to grant an order of possession if the landlord's notice to end a tenancy complies with section 52 of the *Act*.

After reviewing the 10 Day Notice submitted into evidence by the parties, I find that the notice meets the requirements for form and content as set out in section 52 of the *Act*.

As such, I find that the landlord is entitled to an Order of Possession. As the effective vacancy date of the notice has now passed, the Order of Possession is effective two days after service on the tenant.

Conclusion

The tenant's application to cancel the 10 Day Notice dismissed without leave to reapply, and the 10 Day Notice is upheld as it meets the requirements of section 52 of the *Act*.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. The landlord is provided with this Order in the above terms and the landlord must serve the tenant with this Order as soon as possible. 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: June 03, 2019

Residential Tenancy Branch