



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPR

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 One Month Notice to End Tenancy for Cause (the “One Month Notice”), and for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”).

The Landlord was present at the teleconference hearing along with a family member (the “Landlord”). The Landlord also had a witness present who was asked to exit the hearing until time to present witness testimony. As the Landlord described what the witness would be speaking to and it was found to not be relevant to the claims of this hearing, the witness did not join the hearing. However, at one point the witness was heard on the phone and the Landlord was again reminded that the witness needed to exit the call and the Landlord stated that the witness had left the room.

The Tenant and an advocate (the “Tenant”) were also present for the teleconference hearing. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. However, it was determined that some of the Landlord’s evidence was served to the Tenant outside of the required timeframe provided by the *Residential Tenancy Branch Rules of Procedure*. As the Landlord was not sure of the exact dates each piece of evidence was served, I accept the testimony of the Tenant that three documents each titled “formal response” were served less than 14 days prior to the hearing. Therefore, these three documents are not accepted and will not be considered as part of this decision.

The Landlord confirmed receipt of a copy of the Tenant's evidence and did not bring up any issues regarding service.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on a One Month Notice to End Tenancy for Cause?

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

Background and Evidence

The parties agreed that the tenancy started on January 1, 2016. The Tenant testified that rent was originally \$800.00 per month but on August 5, 2016 hydro was disconnected and has not been back on since. The Tenant stated that at that time the Landlord advised him that rent would be \$350.00 or for an additional \$150.00 an extension cord could be used to bring hydro to the unit and the rent would therefore be \$500.00 per month.

The Tenant stated that at the end of April 2019 the extension cord was also disconnected and therefore rent was back to \$350.00. However, the Tenant also referenced a previous dispute resolution decision submitted in his evidence dated July 2, 2019. In this decision the Landlord was ordered to re-connect hydro by July 31, 2019 or the rent would be reduced by \$250.00 per month. The Tenant stated that as the hydro was not reconnected, the rent is now \$100.00 per month.

The Landlord testified that the rent is \$500.00 per month and that there is no rent reduction. The Landlord stated that there is no hydro but that it is the Tenant's choice to reside in the rental unit with no hydro.

The parties were in agreement that rent is due on the first day of each month and that no security deposit was paid.

The Landlord testified that the Tenant was served with a One Month Notice and a 10 Day Notice in person on June 10, 2019. The Tenant confirmed receipt of both notices on June 10, 2019.

A copy of the One Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

- Tenant is repeatedly late paying rent

Although the details of cause on the notice state “storing scraps for selling” and “repairing small engines”, the only cause listed on the notice was regarding late payment of rent.

The Landlord testified that rent was paid late in March, April, May, June and July 2019. He stated that on May 19, 2019 he received a money order for March, April and May 2019 rent, that no rent was paid for June 2019 and that the Tenant paid \$700.00 on July 25, 2019.

The Landlord testified that rent was also paid late prior to March 2019 but that the Tenant would date the rent receipts to make it seem that rent was paid on time.

A copy of the 10 Day Notice was submitted into evidence and states that \$650.00 was unpaid as due on June 1, 2019. The Landlord stated that this was \$150.00 due from May 2019 and \$500.00 from June 2019. The Landlord testified that he received a payment of \$700.00 on July 25, 2019.

The Tenant stated that he was previously dealing with another Landlord until May 2019 when he met the Landlord who was present at the hearing. The Tenant stated that they applied to dispute both notices on June 14, 2019. However, through the same application they also applied for emergency repairs. The Tenant stated that due to the expedited hearing process their application for emergency repairs overrode their application to dispute both notices and they had not realized as nothing popped up to tell them the hearing would be about emergency repairs only.

The Tenant stated that they did not realize until after the hearing through the decision dated July 2, 2019 which addressed emergency repairs only.

The Tenant testified as to a falling out he had with the other Landlord in March 2019. Since then, the Tenant noted that the Landlord would not answer the door or take phone calls and would not talk to the Tenant. The Tenant also stated that this Landlord would not accept rent. The Tenant submitted that this is why March, April and May 2019 rent was paid on May 19, 2019 when the other Landlord came to get the rent. The Tenant stated that prior to this he did not know who to pay rent to and did not have any contact information such as a mailing address.

The Tenant testified that he would write his own rent receipts as the Landlord refused to provide them. The Tenant referenced a letter submitted into evidence dated May 24, 2019 written by the Tenant's advocate in which they request receipts for rent paid in cash, in accordance with the *Act*.

The Tenant stated that as they had not received contact information for the Landlord and were unable to get in contact, they found a business address for the Landlord to mail rent to. The Tenant stated that this was following service of the two notices to end tenancy on June 10, 2019 when the Landlord refused to accept June rent or provide information about paying the rent. The Tenant paid rent on July 25, 2019 as that was the day the Landlord came to the rental unit after not returning phone calls.

The Landlord stated that the Tenant and advocate are making up stories and that the Tenant never attempted to pay rent or had the rent refused by either of the Landlords.

The Tenant requested information about how to pay rent from the Landlord and the Landlord did not provide a clear response.

Analysis

The parties agreed that the Tenant was served with a One Month Notice and a 10 Day Notice on June 10, 2019. As stated in Section 47(4) of the *Act*, a tenant has 10 days to dispute a One Month Notice. As stated in Section 46(4) of the *Act*, a tenant has 5 days to dispute a 10 Day Notice.

If a tenant does not dispute a One Month Notice within 10 days, then Section 47(5) of the *Act* applies as follows:

(5) If a tenant who has received a notice under this section does not 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 by that date.

If a tenant does not dispute a 10 Day Notice within 5 days, then Section 46(5) of the *Act* applies as follows:

(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.

The Tenant testified as to an application made on June 14, 2019 to dispute both notices to end tenancy. The Tenant also stated that they were unaware that the application would be proceeding on the claim of emergency repairs only and not on the notices. However, the Tenant did not submit any evidence that would establish their claim that they had applied to dispute the notices on time.

I also find that the Tenant would have received Notice of Hearing documents from the Residential Tenancy Branch which outlines the claims that were made on the application and that will be considered at the hearing. As such, I find that I have no evidence before me that the Tenant applied to dispute either notice within the allowable timeframe.

Although the parties at the hearing were not in agreement as to whether the reasons for the notices were valid, as I am not satisfied that the Tenant applied to dispute the notices in accordance with Sections 46(4) and 47(4), I find that Sections 46(5) and 47(5) of the *Act* apply. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on both the 10 Day Notice and the One Month Notice.

Upon review of both notices, I find that the form and content comply with Section 52 of the *Act*. Therefore, pursuant to Section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession. I award the Landlord a two-day Order of Possession.

Conclusion

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. 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: August 26, 2019

Residential Tenancy Branch