



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASPEN COURT and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 8, 2019 ("10 Day Notice"), pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 13 minutes. The landlord's two agents attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The male landlord ("landlord") confirmed that he was the owner of the "landlord company" named in this application and the "female landlord" was the resident manager. Both agents confirmed that they had permission to represent the landlord company at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The female landlord could not recall the date or method of service for the landlord's evidence package to the tenant. I informed the landlord that I could not consider the landlord's evidence package at the hearing or in my decision because I could not confirm how or when it was served to the tenant. The only evidence I considered from

the landlord was the 10 Day Notice, since the tenant said that he received it in his application and he did not provide a copy of it for this hearing.

The female landlord testified that she served the tenant with the landlord's 10 Day Notice on July 8, 2019, by way of posting to his rental unit door. The notice indicates an effective move-out date of July 17, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on July 11, 2019, three days after its posting. The tenant indicated that he received the notice on July 8, 2019, by way of posting to his door, in his application when he applied to cancel the notice.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *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 re-apply.

In the absence of any evidence or submissions from the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The landlord testified regarding the following facts. This month-to-month tenancy began on October 1, 2016. Monthly rent in the current amount of \$985.00 is payable on the first day of each month. A security deposit of \$465.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice for unpaid rent of \$985.00 due on July 1, 2019. The landlord testified that the tenant failed to pay the above rent amount as well as additional rent of \$985.00 for September 2019. The female landlord said that the tenant paid August 2019 rent of \$985.00 late on August 3, 2019, and she provided him with a receipt for the payment. She said that on August 3, 2019, as well as other occasions, she informed the tenant verbally that he still had outstanding rent for July 2019. She claimed that the tenant did not want to talk about it and he said that it would be dealt with at this hearing for his application.

The landlord seeks an order of possession based on the 10 Day Notice.

Analysis

According to subsection 46(4) of the *Act*, a tenant may dispute a 10 Day Notice by making an application for dispute resolution within five days after the date the tenant was deemed to have received the notice. The tenant was deemed to have received the 10 Day Notice on July 11, 2019 and filed his application to dispute it on July 10, 2019. Therefore, he was within the five-day time limit to dispute the 10 Day Notice. However, the tenant did not appear at this hearing to present his application.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which in this case required the tenant to pay by the first day of each month.

On a balance of probabilities and for the reasons stated below, I accept the landlord's undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due of \$985.00 due on July 1, 2019, within five days of being deemed to have received the 10 Day Notice.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days or to appear at this hearing to pursue his application, led to the end of this tenancy on July 21, 2019, the corrected effective date on the 10 Day Notice.

In this case, this required the tenant and anyone on the premises to vacate the premises by July 21, 2019.

Section 55(1) of the *Act* reads as follows:

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.*

As noted above, I dismissed the tenant's application. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. Accordingly, I find that the landlord is entitled to an Order of Possession effective two (2) days after service on the tenant.

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant's entire application is dismissed without leave to reapply.

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: September 12, 2019

Residential Tenancy Branch