

Dispute Resolution Services



Residential Tenancy Branch
Office of Housing and Construction Standards

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A matter regarding NANAIMO ABORIGINAL CENTRE and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNR, MT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), and for an extension of time to dispute the 10 Day Notice.

The Tenant and an agent for the Landlord (the “Landlord”) were present for the teleconference hearing and were affirmed to be truthful in their testimony. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The parties were not in agreement as to the date that the Tenant’s evidence was served, however, the Landlord confirmed receipt and that they were willing to proceed with the hearing as scheduled.

The Tenant confirmed receipt of the Landlord’s evidence. As such, I accept that both parties were served with the other party’s evidence and the evidence of both parties will therefore be considered in this decision.

Issues to be Decided

Should the Tenant be granted an extension of time to dispute the 10 Day Notice to End Tenancy for Unpaid Rent?

Should the 10 Day Notice to End Tenancy for Unpaid Rent be cancelled?

If the 10 Day Notice to End Tenancy for Unpaid Rent is upheld, is the Landlord entitled to an Order of Possession?

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 tenancy details which were also confirmed by the tenancy agreement submitted into evidence. The tenancy started on June 1, 2017. Rent in the amount of \$800.00 is due on the first day of each month.

Although the tenancy agreement states that no security deposit was paid, the parties agreed that a deposit was paid by the Tenant through a previous management company and transferred to the current Landlord when they took over.

The Landlord testified that a 10 Day Notice was posted on the Tenant's door on July 5, 2019. The Tenant confirmed receipt of the 10 Day Notice on Friday July 5, 2019. A copy of the 10 Day Notice was submitted into evidence and states that \$800.00 was unpaid as due on July 1, 2019. The effective end of tenancy date was stated on the notice as July 20, 2019.

The Landlord stated that they have not received any money towards July 2019 rent and therefore are still owed \$800.00. They stated that they received a cheque from the ministry for rent payments except for May 2019 when they were paid by money order from the Tenant.

The Tenant stated that there were issues with the ministry cheque for rent in May 2019 and as such, he obtained a money order to pay the rent for May 2019 so as to not cause any issues. However, he stated that the ministry cheque was then provided to the Landlord as well so a total of \$1,600.00 was paid for May 2019 rent.

The Tenant stated that this is why he did not pay rent for July 2019, due to the double payment in May 2019. The Tenant referenced a copy of a money order dated April 29, 2019 that was submitted in his evidence. The money order was addressed to the Landlord in the amount of \$800.00.

The Landlord referenced payment information submitted in their evidence which states that rent was paid by cheque in April and May 2019 and by money order in June 2019. They did note that this may have been an error with the payments for June and May 2019 reversed but stated that they did not receive a double payment in May 2019 and did not receive any money towards rent for July 2019.

The Tenant testified that he applied to dispute the notice in time but after he filed his application and had not heard anything he called to inquire and was informed that there was a missing signature on the application. As such, he stated that he had to apply again. The Tenant's Application for Dispute Resolution is dated July 15, 2019.

The Landlord stated that they are seeking an Order of Possession and would be willing to provide until September 30, 2019 for the Tenant to move.

Analysis

Section 46(4) of the *Act* states that after receipt of a 10 Day Notice, a tenant has 5 days in which to dispute the notice or pay the outstanding rent.

If a tenant does not do so, 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 stated that they applied to dispute the notice within 5 days, but due to an error with the application had to apply again. I find that a tenant's right to apply within 5 days includes the responsibility to ensure the Application for Dispute Resolution is complete and able to be accepted within the timeframe.

However, as the Tenant did not fully complete an application within the 5 days, I find that he applied on July 15, 2019, the date that the application was signed and re-submitted. As the Tenant confirmed receipt of the 10 Day Notice on July 5, 2019, I find that an application on July 15, 2019 was not within the 5 days allowable and therefore Section 46(5) applies, and the Tenant is conclusively presumed to have accepted that the tenancy ends.

Although the Tenant applied for an extension of time to dispute the notice, I note that this is for extenuating circumstances only, such as being in the hospital at all material times. I do not find that a failure to fully complete the application form meets the definition of an extenuating circumstance that would allow me to extend the timeframe provided under the *Act*.

However, I also note that in consideration of the testimony and evidence of both parties, that I do not find sufficient evidence before me to support the Tenant's claim that rent was paid twice in May 2019 which led to non-payment of rent in July 2019. While the Tenant submitted a copy of a money order issued on April 29, 2019, I do not find sufficient evidence before me to confirm that a rent cheque from the ministry was also provided for May 2019.

I find that the evidence provided by the Landlord establishes a one-time payment by money order but does not indicate an overpayment or double payment. As such, I am not satisfied as to a double payment of rent in May 2019 that would explain a non-payment of rent in July 2019.

Therefore, I find that the 10 Day Notice dated July 5, 2019 is valid and the Tenant is conclusively presumed to have accepted that the tenancy ends. As such, the Tenant's application to dispute the 10 Day Notice is dismissed and the Landlord is entitled to an Order of Possession pursuant to Section 55 of the *Act*.

I accept the testimony of the Landlord that they are willing to provide the Tenant until September 30, 2019 to move and therefore issue an Order of Possession for this date.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **September 30, 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.

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 17, 2019

Residential Tenancy Branch