



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNL, MNDCT, OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a 10 Day Notice to End Tenancy for Cause dated September 25, 2019 ("10 Day Notice"), to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property dated September 29, 2019 ("Two Month Notice"); for a monetary order for damage or compensation under the Act; and for an order directing the Landlord to comply with the Act, regulation or tenancy agreement.

The Tenant, the Landlord, and counsel for the Landlord ("Counsel") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant said that he served his Application and documentary evidence on the Landlord via registered mail to the Landlord's Counsel's office. The Counsel confirmed receipt of this registered mail package.

The Counsel said the Landlord served the Tenant with their documentary evidence via email on November 6, 2019, the day before the hearing. The Tenant said he received this evidence, but that he had limited time to review it. Section 88 of the Act sets out the ways in which documents are permitted to be given or served on a person under the Act. Further, Rule 3.15 states:

The respondent must ensure evidence that the respondent intends to rely on at

the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

See also Rules 3.7 and 3.10.

[emphasis added]

I find that the Landlord did not serve the Tenant with his evidence in compliance with the Rules and, therefore, I find that the Landlord's documentary evidence is not before me.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I explained to the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the Tenant indicated different matters of dispute on the Application, the most urgent of which were the Applications to set aside the 10 Day Notice and the Two Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's request to set aside the 10 Day Notice, and if necessary, the Two Month Notice. The Tenant's other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- If the 10 Day Notice is confirmed, is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the fixed term tenancy began on October 1, 2017, with a monthly rent of \$900.00, due on the first day of each month. The Parties agreed that the Tenant did not pay a security or pet damage deposit to the Landlord.

The Parties agreed that the Landlord served the Tenant with a 10 Day Notice in person by process server on September 29, 2019. The ground for the 10 Day Notice was for unpaid rent of \$1,200.00 due on September 1, 2019, which the Landlord said consisted of \$300.00 owing from August 2019 and \$900.00 owing for September 2019. The effective vacancy date on the 10 Day Notice was October 9, 2019.

The Tenant that he did not pay rent in September 2019 and that his parents refused to pay it for him. The Tenant said he could not pay because he could not work, because he was injured from an assault by the Landlord. The Tenant said the Landlord was charged and served a month in jail for this. The Tenant said that he is permanently injured and that any rent owing can be offset by what the Landlord owes him.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

An RTB arbitrator is limited to the authority set out in the Act, regulation and policy guidelines. The Tenant argued that section 91 of the Act also directs that “the common law respecting landlords and tenants applies in British Columbia.” While this is true, the Tenant did not cite any cases that apply to his situation for my consideration.

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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 of the Act applies to the 10 Day Notice:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, 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.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

...

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

Upon review of the 10 Day Notice, I find that it is completed in accordance with the requirements of section 52 of the Act as to form and content.

Under the legislation a tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an arbitrator. However, there is no evidence before me that the Tenant had a right under the Act to deduct all or a portion of his rent.

The Tenant applied for dispute resolution within the time limit permitted under the Act; however, I find the Tenant's Application had no merit, as the Tenant admitted his September 2019 rent was not paid within 5 days after receiving the 10 Day Notice. Therefore, I dismiss the Tenant's Application without leave to reapply, and I confirm the validity of the 10 Day Notice. The Tenant's other claims in the Application are also dismissed.

As the Tenant's Application is dismissed, I find the Landlord is entitled to an Order of Possession, pursuant to section 55 of the Act.

Order of possession for the landlord

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.

Given that the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

Conclusion

The Tenant's Application is dismissed, as the Tenant did not pay rent when it was due, as required by section 26 of the Act. The Landlord is granted an Order of Possession effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Tenant's other claims in his Application are dismissed.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: November 12, 2019

Residential Tenancy Branch