



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR FFT

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*; and
- recovery of the filing fee pursuant to section 72 of the *Act*.

The landlord's agent H.L. attended at the date and time set for the hearing of this matter and spoke on behalf of the landlord. The landlord joined the hearing late at approximately 11:15 a.m. The tenant, who was the applicant in this matter, did not attend this hearing, although I left the teleconference hearing connection open until 11:17 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 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's agent, 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.

The landlord's agent testified that the landlord was served with the tenant's Notice of Dispute Resolution Proceeding package for this hearing but no evidence. The landlord's agent testified that the tenant was served with the landlord's evidence by Canada Post registered mail on October 16, 2019 and the landlord's evidence was also submitted to the Residential Tenancy Branch dispute website.

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's agent testified that there was a written tenancy agreement between the parties, which the landlord submitted into documentary evidence. The landlord's agent confirmed the following unchallenged testimony regarding the terms of the tenancy agreement:

- This fixed-term tenancy began September 1, 2019, with a scheduled end date of August 31, 2020.
- Monthly rent of \$1,800.00 is payable on the first of the month.
- The tenant did not pay a security or pet damage deposit.

The landlord's agent testified that the tenant did not pay her rent on September 1, 2019. On September 23, 2019, the landlord's agent served the tenant with a 10 Day Notice by posting it to the tenant's door. In support of his testimony, the landlord's agent 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. The notice is dated September 23, 2019 and states that \$1,800.00 in rent was not paid when due on September 1, 2019. The notice provides an effective vacancy date of October 6, 2019. The tenant filed an Application to dispute the notice on September 30, 2019.

The landlord's agent testified that in addition to September 2019 rent, the tenant has failed to pay rent for the months of October and November 2019.

The landlord's agent confirmed that the landlord has not received any full or partial rent payments from the tenant for the months of September, October and November 2019. The

landlord's agent testified that the tenant continues to reside in the rental unit 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 September 23, 2019 by posting on the door, and as such is deemed to have received the notice three days after posting, on September 26, 2019. The tenant filed an application to dispute the notice on September 30, 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 \$1,800.00 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 September to November 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 is dismissed in its entirety 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: November 07, 2019

Residential Tenancy Branch