



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL OPN OPR**

Introduction

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

- Authorization to recover the filing fees from the tenants pursuant to section 72;
- An Order of Possession for a tenant's Notice to End Tenancy pursuant to sections 45 and 55;
- An Order of Possession for unpaid Rent pursuant to sections 46 and 55.

The landlords attended the hearing and were represented by co-landlord, SP ("landlord"). Both of the tenants attended the hearing. The tenant KS acknowledged service of the landlord's Application for Dispute Resolution, evidence and amendment. The tenant JO acknowledged receiving the same documents '2 days before the deadline'. Neither of the tenants raised an issue with timely service of documents. Neither of the tenants filed any documentary evidence in this proceeding. I am satisfied the tenants were served with the Application for Dispute Resolution Proceedings in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Should the tenant's Notice or the landlord's 10 Day Notice for Unpaid Rent be upheld or cancelled?

Is the landlord entitled to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided in evidence by the landlord. The tenancy began with the named landlords and both of the tenants on October 1, 2018. The tenancy was for a fixed term, ending on October 1, 2019. Rent was set at \$875.00 per month payable on the first day of the month.

The landlord gave the following testimony. There was a falling out between the two tenants in September 2019, leading to the tenant, KS giving the landlord a One Month Notice to End Tenancy with an effective date of September 28, 2019. A copy of the tenant KS's Notice was provided as evidence. The tenant KS testified that she has vacated the rental unit in accordance with the Notice and no longer lives there.

The landlord testified that they discussed potentially re-leasing the rental unit to the tenant, JO however when the landlord sent an unsigned offer to lease to him, he didn't sign the offer and return it. He also never provided the landlord with rent for the month of October, a deposit or references. On October 4th, the landlord decided to rescind her offer to lease as nobody had signed it and the landlord never received rent for the month of October.

The landlord testified she sought to do a condition inspection report with the tenant JO on October 5, 2019 but the request was ignored. No rent money came in from the remaining tenant, JO, and October 11, 2019 the landlord personally served the tenant JO with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice"). According to the Notice, the tenant owes \$875.00 + \$437.50 in arrears. A copy of the Notice, stating an effective date of October 19, 2019 was provided as evidence. Also provided in evidence was a witnessed, signed proof of service document indicating Notice was served on October 11, 2019.

The tenant JO provided the following testimony. He was unaware the co-tenant and the landlord were communicating and were 'conspiring' to end the tenancy. The co-tenant and the landlord were doing things 'behind my back'. He was under the impression that he had a new lease with the landlords. To corroborate this, the tenant testified he talked with the landlords, texted them and sent emails back and forth with them, although no documentary evidence was provided by the tenant to support this claim. The tenant JO further testified he signed a new lease with the landlord and was going to present it as evidence although he had difficulty in uploading it to the Residential Tenancy Branch website. He did not testify as to what attempts he made to obtain assistance in uploading evidence.

When he received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, he tried to have a conversation with the landlord. He testified that he tried to offer the landlords payment for arrears however the landlords told him they would take his money then still proceed with evicting him. He did not file an Application for Dispute Resolution to dispute the Notice because he didn't think it was a real document. Although he

acknowledges receiving it and pointed out an error in the effective date of the notice, the tenant referred to the Notice as a 'random, strange notice' in his testimony.

Analysis

Residential Tenancy Branch Policy Guideline PG-13 speaks to the Rights and Responsibilities of Co-tenants. Co-tenants are defined as two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

In the case before me, KS and JO are co-tenants as defined by PG-13. One of the co-tenant, KS ended the tenancy in accordance with section 45 of the *Act*.

PG-13 states:

If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants.

Accordingly, I find the tenancy ended with both tenants on September 28, 2019 pursuant to the tenant KS's One Month Notice to End Tenancy issued on September 1, 2019.

Section 45(4) states a notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*]. I have examined the tenant's notice and find that it complies with the form and content provisions of section 52 of the *Act*, which states that the notice must be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

September 28th, the effective date stated on the tenant's Notice, has passed. Therefore, the landlord is entitled to an Order of Possession effective 2 days after service upon the remaining tenant.

Although the tenancy has ended pursuant to section 45 (tenant's notice), the issue of whether the tenancy should end pursuant to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities should also be determined.

I am satisfied, based on the landlord's proof of service documents and testimony that the Notice was personally served on October 11, 2019 in accordance with sections 88 and 90 of the *Act*. The tenant testified he did not pay the arrears in rent or file an application to dispute the Notice.

Section 46 of the *Act* states:

- (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.
- (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 failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by October 19, 2019, corrected to October 21st in accordance with section 53 of the *Act*. As that has not occurred, I find that the landlord is entitled to an Order of Possession effective 2 days after service upon the remaining tenant.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **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.

I issue a monetary order in the landlord's favour in the amount of **\$100.00**.

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 13, 2019