



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOW COST RENTALS & SALES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR FFT OPR-DR

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlords’ for:

- an Order of Possession for non-payment of rent pursuant to section 55.

And the tenant’s for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:48 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. Two agents (“**CD**” and “**KR**”) attended the hearing for the landlords. They were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notices of Hearing. I also confirmed from the teleconference system that the landlords’ agents and I were the only ones who had called into this teleconference.

KR testified that the tenant was served the notice of dispute resolution form and supporting evidence package by posting it on the door of the rental unit on October 28, 2019. I find that the tenant is deemed served with this package on October 31, 2019, three days after KR posted it, in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue – Amendment of Landlords’ Claim

At the start of the hearing CD testified that the tenant has failed to pay rent for the months of October, November and December 2019. He asked that the landlords' application be amended to include a monetary claim to recover these rental arrears.

Rule of Procedure 4.2 addresses applications for amendments made at a hearing. It states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

In the circumstances, I do not find that the addition of a monetary claim could have reasonably been anticipated by the tenant. The landlords filed this application on October 28, 2019. Based on the testimony of CD, I understand that the tenant was in rental arrears at this time. As the landlords' initial application did not include a monetary claim, I find that it would be unreasonable for the tenant to expect that a monetary claim be added to the landlords' application at the hearing, as if the landlords wanted to make a monetary claim, they could have done so at the time they made their application.

As such, I decline to order that any amendment be made.

Nothing in this decision prevents the landlords from making a further claim against the tenant to recover rental arrears.

Issues to be Decided

Are the landlords entitled to an order of possession?

Is the tenant entitled to:

- 1) the cancelation of the Notice; and
- 2) recover his filing fee from the landlords?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlords' agent, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written fixed-term tenancy agreement starting April 1, 2019 and ending March 31, 2020. Monthly rent is \$1,650 and is payable on the first of each month. The tenant paid the landlords a security deposit of \$1,650. The landlords still retain this deposit.

CD testified that the tenant did not pay October 2019 rent in the amount of \$1,650.

The landlord issued the Notice on October 11, 2019 for \$1,650 in unpaid rent due on October 1, 2019. The Notice has an effective date on October 31, 2019. The landlord entered a copy of the Notice into evidence.

KR testified that she served the Notice on the tenant on October 11, 2019 by leaving it on an eye-level flowerpot stand beside the front door of the rental unit.

The tenant filed his application to dispute the Notice on October 28, 2019.

CD testified that, to date, the tenant is \$4,950 in rental arrears, representing unpaid rent for the months of October, November, and December 2019.

Analysis

I have reviewed all documentary evidence provided by the parties. Pursuant to sections 88(g) and 90(c) of the Act, I find that the tenant is deemed to have received the Notice three days after KR served it (October 14, 2019).

I find that the tenant was obligated to pay monthly rent in the amount of \$1,650. Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rent for the months of October, November, and December 2019.

Section 46 of the Act states, in part:

Landlord's notice: non-payment of rent

(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.

I accept CD's undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 46(4)(a) of the Act and did not apply to dispute the Notice within the five-day period under section 46(5)(b) of the Act. The Act does not permit applications to dispute the Notice to be made after this five-day period, absent extenuating circumstances faced by the tenants. I have no evidence of such circumstances existing.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, October 31, 2019.

I find that the Notice meets the form and content requirements of section 52 of the Act.

As such, the landlords are entitled to an order of possession and the tenant's application to cancel the Notice is dismissed.

Conclusion

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

I order that the tenant provide the landlords with vacant possession of the rental unit within two days after service of this order on the tenant. Should the tenant fail to comply with this order, this order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

The landlord is provided with these orders in the above terms and must serve the tenant with this order as soon as possible.

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: December 16, 2019

Residential Tenancy Branch