



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESGROUP PROPERTIES LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice") pursuant to section 46;

The landlord's agent SK attended ("the landlord"). The tenant attended. The hearing process was explained, and an opportunity was given to ask questions about the hearing process. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. No issues of service were raised. I find each party served the other in accordance with the *Act*.

The landlord explained that the correct name of the landlord is the corporate landlord and requested that the proceedings be amended to reflect this correction. Accordingly, the proceedings were amended to reflect the correct name of the landlord.

Amendment

The tenant's application dealt with a Ten-Day Notice dated November 3, 2019. The tenant acknowledged that the landlord posted this Notice on November 3, 2019, thereby effecting service under section 90 three days later, that is, on November 6, 2019.

On December 3, 2019, the tenant filed an application to amend the Application to add a request to cancel a Ten-Day Notice dated December 2, 2019. The tenant acknowledged that the landlord posted the second notice on December 2, 2019 thereby effecting service under section 90 three days later, that is on December 5, 2019.

Order of Possession

I informed the parties that in the event I dismissed the tenant's application to cancel the Notices issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an order of possession in favour of the landlord. Section 55 states as follows:

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.

Issue(s) to be Decided

Is the tenant entitled to cancel the Ten-Day Notices?

Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed the tenancy began on October 20, 2019 and is ongoing. Monthly rent is \$1,800.00 payable on the first of the month. The tenant provided a security deposit of \$850.00 which the landlord holds. The landlord submitted a copy of the tenancy agreement. The tenant has not provided authorization to the landlord to retain the security deposit.

The tenant acknowledged she paid \$1,000.00 for rent due November 1, 2019 and she owed a balance of \$800.00 for that month. The partial payment was accepted for use and occupancy only and a copy of the receipt was submitted as evidence.

As discussed earlier, the tenant's application originally dealt with a Ten-Day Notice dated November 3, 2019. The tenant acknowledged that the landlord posted this Notice on November 3, 2019, thereby effecting service under section 90 three days later, that is, on November 6, 2019.

The tenant acknowledged she did not pay rent due on December 1, 2019 of \$1,800.00.

The parties agreed that on December 2, 2019, the landlord served the tenant with the second Ten-Day Notice by posting to the tenant's door, thereby effecting service under section 90 three days later, that is, on December 5, 2019. On December 3, 2019, the tenant filed an application to amend the Application to add a request to cancel a Ten-Day Notice dated December 2, 2019. The tenant acknowledged that the landlord posted the second notice as claimed above.

The tenant acknowledged that the current outstanding balance for rent is \$2,600.00. The Notice stated that the tenant was required to pay the outstanding rent of \$2,475.00 or file an Application of Dispute Resolution within 5 days. The Notice contained an effective date of December 15, 2019.

The tenant acknowledged she did not pay outstanding rent and that rent is currently owing in the amount of \$2,600.00. The landlord could not provide an explanation for the lower figure of \$2,475.00 in the Notice.

The tenant stated the tenant was expecting income to pay the rent which had not been received. Hence, the tenant had not paid the rent.

Analysis

I have reviewed all documentary evidence and testimony.

I will first address the Application with respect to the most recent Ten-Day Notice dated December 2, 2019.

I find the form and content of the Notice complies with section 52 of the *Act*. I find the tenant was served with the Ten-Day Notice as testified by the landlord in accordance with sections 88 and 90 of the *Act*. I find the tenant did not pay the overdue rent within 5 days.

The tenant's explanation for failing to pay rent because of unreceived expected income is not a valid reason.

Section 26(1) of the Act states as follows:

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.*

I find the tenant's application to cancel the Ten-Day Notice is without merit. Accordingly, I dismiss the tenant's application without leave to reapply.

As cited earlier, section 55(1) of the Act states as follows:

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.

I have dismissed the tenant's application and upheld the landlord's Notice. As the tenant continues to occupy the unit, I find the landlord is entitled to an order of possession under section 55, effective two days after service of the order.

As I have issued an Order of Possession, I will not consider the application to cancel the earlier Notice.

Conclusion

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I grant the landlord an order of possession effective two days after service on the tenant.

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be enforced as an order of that Court.

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 27, 2019

Residential Tenancy Branch