



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) to cancel a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated October 29, 2019 (10 Day Notice).

The landlord attended the teleconference hearing. The hearing was held by telephone conference call and began promptly at 11:00 a.m., Pacific Time, on this date, December 23, 2019. The line remained open while the phone system was monitored for 13 minutes and the only participant who called into the hearing during this time were landlord. As the applicant tenant did not attend the hearing and after the ten-minute waiting period at 11:10 a.m. Pacific Time, the tenant's application was **dismissed without leave to reapply**. As the tenant did not attend the hearing, I consider the 10 Day Notice to be undisputed.

I have reviewed the Notice of Dispute Resolution Proceeding dated November 7, 2019 (Notice of Hearing) and have confirmed that the correct date and time of the hearing are listed. In addition, I have confirmed that the correct access codes were provided to both parties.

Preliminary and Procedural Matters

The landlord testified that the tenant provided the incorrect rental unit in their application and that the tenant never occupied 106, and has always occupied 204 as unit 106 was not ready at the start of the tenancy. Therefore, pursuant to section 64(3)(c) of the Act, I have amended the application to reflect the correct rental unit address.

In addition, the landlord provided their email address at the outset of the hearing. The tenant included their email address in their application. The decision will be emailed to both parties. Any orders will be emailed to the appropriate party for service on the other party.

Background and Evidence

The landlord affirmed that the 10 Day Notice was served on the tenant by posting the tenant's door on October 29, 2019. The amount listed as owed was \$650.00 due October 1, 2019. The landlord stated that the tenant has failed to pay any rent for September, October, November and December of 2019 and continues to occupy the rental unit. The 10 Day Notice is missing the effective vacancy date but is signed and dated by the landlord.

The landlord is seeking an order of possession.

Analysis

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

I accept that the tenant failed to pay rent September, October, November and December of 2019 and that the 10 Day Notice is valid as a result. Section 68 of the Act applies and states:

Director's orders: notice to end tenancy

68(1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], **the director may amend the notice if satisfied that**

(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and

(b) in the circumstances, it is reasonable to amend the notice.

[Emphasis added]

I find that the effective vacancy date being omitted is not a fatal flaw as I find that on the balance of probabilities that the tenant would not or ought to have known that the tenancy would end 10 days after the October 29, 2019 date listed on the 10 Day Notice,

which I find to be November 8, 2019. As the 10 Day Notice was posted to the tenant's door, section 90 of the Act states that the document is deemed served 3 days after it is posted. Therefore, I find the 10 Day Notice was deemed received as of November 1, 2019, which would extend the 10 Day Notice effective vacancy date to November 11, 2019 automatically pursuant to section 52 of the Act.

Therefore, as the tenant failed to attend the hearing and given that I accept the landlord's undisputed testimony that the tenant continues to occupy the rental unit and has not paid rent in four months, that I find the tenancy ended on November 11, 2019. Section 55 of the Act applies and states:

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.

[Emphasis added]

Given the above and after determining that the 10 Day Notice complies with the Act as described above, and pursuant to section 55 of the Act, I must grant an order of possession. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

Conclusion

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

The tenancy ended on November 11, 2019, which was the corrected effective vacancy date.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision will be emailed to both parties. The order of possession will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, except as 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: December 23, 2019

Residential Tenancy Branch