



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MORE THAN A ROOF HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MT, LRE, OLC, RR, MNDCT, OPR, FFL,

Introduction

This hearing dealt with cross applications filed by the parties. On December 18, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to Section 46 of the *Residential Tenancy Act* (the "Act"), seeking more time to cancel the Notice pursuant to Section 66 of the *Act*, seeking to set restrictions on the Landlord's right to enter pursuant to Section 70 of the *Act*, seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, and seeking monetary compensation pursuant to Section 67 of the *Act*.

On December 18, 2019, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On December 20, 2019, this Application was set down for a participatory hearing to be heard as a cross application with the Tenant's Application on January 20, 2020 at 9:30 AM.

The Tenant attended the hearing. In addition, J.L. and L.M attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing package by posting it to the office door "sometime" in December 2019 and J.L. confirmed that this package was received. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

J.L. advised that the Tenant was served with the Notice of Hearing package in person on December 20, 2019 and the Tenant confirmed that he received this package. Based

on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Notice of Hearing package.

The Tenant advised that he “believes” he served the Landlord with his evidence at least 14 days prior to the hearing but had no proof of this service. J.L. advised that the Landlord only received this evidence on January 10, 2020. While service of this evidence was uncertain, and despite the Tenant’s evidence appearing to have also been submitted to the Residential Tenancy Branch late contrary to the timeframe requirements of Rule 3.14 of the Rules of Procedure, as J.L. took no issue with this late evidence, I have accepted this evidence and will consider it when rendering this decision.

J.L. advised that the Tenant was served the Landlord’s evidence on January 7, 2020 in person, with a witness. The Tenant stated that he received this evidence by email only. on January 10, 2020. As the Landlord served this evidence with a witness, and as the Tenant’s testimony was uncertain and wavering, I am satisfied that the Landlord’s evidence was, more likely than not, served to the Tenant in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure. In addition, part of the Landlord’s evidence included digital evidence in the form of videos that the Tenant confirmed that he could view. As such, I have accepted all of the Landlord’s evidence and will consider it when rendering this decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Tenant’s Application with respect to the Notice and his request for more time to dispute the Notice, and the other claims were dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that 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 Application is

dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
- Is the Tenant entitled to more time to have the Landlord's Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the rent was owed in the amount of \$495.00 per month, due on the first day of each month. A security deposit was not paid.

J.L. advised that the Notice was served to the Tenant in person on December 3, 2019 and the Tenant confirmed that he received this. He stated that \$467.00 was outstanding on December 1, 2019, despite the Notice indicating that rent was due on December 3, 2019. The Tenant confirmed that he understood that rent was due on the first of each month and that this was a typographical error. The Notice also indicated that the effective end date of the tenancy was December 13, 2019.

J.L. stated that the Tenant advised the Landlord that December 2019 rent was paid by money order; however, the Landlord never received this, so they reviewed the security camera footage. In reviewing this footage, the Landlord observed the Tenant placing a document near the office door, taking a picture, and then removing it. The Tenant could be seen placing this document partially in the mail slot, taking a picture, then removing it. The Tenant removed this document both times, did not ever insert it fully into the door, and could be observed walking away with the document. The Notice was subsequently served to the Tenant as rent had not been paid.

The Tenant advised that he paid the rent via a money order that was put through the office door on December 1, 2019. When he received the Notice, he discovered that it would take 60 days to determine what happened to the money order, so he went to

Rentbank to borrow money for rent. He received a cheque for \$950.00 and gave this to the manager of the building on December 4, 2019. He stated that the video is not accurate as he advised that he placed two documents in the door, one of which was the rent, and the other was a receipt for the money order. He then allegedly put the rent through the door and then removed the receipt. Throughout the hearing, the Tenant provided contradicting, confusing testimony and often brought up matters related to theft in the building that were not relevant to the issues at hand. He did not provide any testimony with respect to why he did not dispute the Notice within the required timeframe or why he requested more time to dispute the Notice. He advised that the reason he disputed the Notice is because he “knew the Landlord was up to something” and that he also wanted to file his other claims.

J.L. confirmed that the building manager received a cheque from the Tenant on December 4, 2019 but the Tenant was issued a receipt for use and occupancy only. In addition, Rentbank was contacted about this cheque that was issued and it was determined that it was fraudulently obtained by the Tenant. As a result, this cheque was returned to Rentbank.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, given that the Tenant acknowledged that rent was due on the first of each month, I am satisfied that the incorrect due date was simply a clerical error on the Notice. Consequently, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent. While the Tenant alleges to have paid the rent through the office door on December 1, 2019, when reviewing the video evidence of December 1, 2019, the Tenant can clearly be seen placing a document with an envelope in front of the office door and then taking a picture. He then removes it, places this document in the envelope partially into the

mail slot, and then takes another picture. He removes this document in the envelope, seals the envelope, places it partially into the mail slot, and again takes a picture. The Tenant then removes this envelope and walks away toward the stairwell before appearing to see the security camera, prompting him to turn back towards the office door with his back facing the camera. He stands in front of the door for almost 20 seconds and appears to shuffle through his jacket. He makes no distinct motion of bending down towards the mail slot and in fact, the mail slot can be seen for a portion of this video. The Tenant then turns around, glances at the security camera, and exits through the stairwell.

Based on this video evidence, the Tenant can clearly be seen removing any document placed in the mail slot. In addition, while he claims to have placed this document through the mail slot, I acknowledge that he did turn back to the office door. However, when the Tenant placed the document in the mail slot earlier to take the picture, he clearly had to bend down to do so. When he returned to the office door and had his back towards the camera, he did not make any similar motions and the mail slot could be seen for a portion of this scenario where it was clear that nothing was placed in it. Furthermore, the Tenant was questioned about his testimony of why he would place a receipt in the mail slot along with the cheque, take a picture, and then remove the receipt; however, he could not provide a logical explanation for the purpose of taking a picture of the receipt in the mail slot.

I find it dubious, given the Tenant's posture, that while standing in front of the office door he was able to place anything in the mail slot. As this slot was visible for most of this time, I am even more skeptical of the truthfulness of the Tenant's testimony. In addition, as the Tenant can clearly be seen removing any documents from the mail slot earlier, can clearly be seen not inserting anything into the mail slot earlier, and could provide no logical explanation for why he would place a receipt in the mail slot and take a picture of it, I find that these factors cause me to doubt the credibility of the Tenant on the whole. Given this, I am satisfied that the Tenant feigned paying the rent on December 1, 2019 and it was his intention to do so. This intention is evident as he was observed realizing this mistake when he noticed that he was captured on the security camera doing so.

Based on this, I find the Notice was rightly served to the Tenant. Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do

either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant was served the Notice in person on December 3, 2019. According to Section 46(4) of the *Act*, the Tenant has 5 days, after being deemed to receive the Notice, to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *“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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”*

As the fifth day fell on Sunday December 8, 2019, the Tenant must have paid the rent in full on this date at the latest or made his Application to dispute the Notice by Monday December 9, 2019 at the latest. While the consistent evidence is that the Tenant provided the building manager of a rent cheque on December 4, 2019, based on the evidence that this cheque was fraudulently obtained, and in conjunction with the Tenant’s established lack of credibility, I am not satisfied that the Tenant paid the rent to cancel the Notice.

As I am not satisfied that the Tenant paid the rent in full by December 8, 2019, and as the Tenant made this Application late, I must consider the Tenant’s request for more time to cancel the Notice.

Pursuant to Section 66 of the *Act*, I have the authority to extend the time frame to dispute the Notice “only in exceptional circumstances.” When the Tenant was questioned if there were any exceptional circumstances that prevented him from disputing the Notice within the required time frame, he did not have any explanation other than it was his belief that he paid the rent and that the Landlord was being dishonest. However, it does not make sense to me that if the Tenant had truly believed that he had paid the rent, why he would then dispute the Notice over two weeks later and also request more time to do so. Given the above reasons to doubt the reliability of the Tenant’s testimony, I place no weight on the credibility or the truthfulness of his submissions.

Based on Section 66 of the *Act*, I have the authority to determine whether to consider if the Tenant’s testimony and reasons would constitute exceptional circumstances. I find that the Tenant has provided insufficient evidence of any exceptional circumstances that prevented him from disputing the Notice on time. Ultimately, I am satisfied that the

Tenant is conclusively presumed to have accepted the Notice and I dismiss the Tenant's Application.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*.

As the Landlord was successful in their claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to keep a portion of the security deposit in satisfaction of this debt.

Conclusion

The Tenant's Application with respect to the 10 Day Notice to End Tenancy for Unpaid Rent is dismissed without leave to reapply.

The Landlord is provided with a formal copy of an Order of Possession effective **two days after service of this Order** on the Tenant. Should the Tenant or any occupant 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.

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: January 29, 2020

Residential Tenancy Branch