



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lu'ma Native Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR

Introduction

The landlord filed an Application for Dispute Resolution on November 28, 2019 seeking an Order of Possession for the rental unit. The matter proceeded by way of a hearing pursuant to section 74(2) of the Act (the “Act”) on January 24, 2020. In the conference call I explained the process and provided each party the opportunity to ask questions. The tenant and the agent of the landlord attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

The agent of the landlord gave testimony that he served the Notice of Dispute Resolution Proceeding together with the evidence listed above to the tenant via registered mail in December 2019. That registered mail was returned. The landlord again sent the Notice via registered mail and similarly placed a package of this material under the rental unit door on January 4, 2020.

The tenant confirmed that they received the hearing materials via registered mail on January 24, 2020; however, they did not recall seeing a package under the unit door. The tenant also confirmed that they were prepared for the hearing and ready to speak to the issues herein.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the Act?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord submitted the following relevant evidentiary material:

- A copy of the Residential Tenancy Agreement which was signed by the landlord's agent and the tenant on May 30, 2014, indicating a monthly market rent of \$898.00, due on the first day of each month for a tenancy commencing on June 1, 2014;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") dated October 10, 2019, for \$2,764.00 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacant date of October 18, 2019.
- A tenant ledger showing the rent owing and rent paid during the relevant portion of this tenancy;
- Emails from the tenant to the agents of the landlord on miscellaneous dates concerning payment of rent and changes in amounts of the tenant's subsidy amount and amount of rent due each month.

The landlord testified they issued the 10 Day Notice on October 10, 2019 and served it on the tenant by posting it on the door of the rental unit on the same day. In the hearing the tenant confirmed that they received it, though could not specify the exact date. The documentary evidence contains the letter from the landlord's agent showing the tenant's acknowledgement of arrears, as well as a statement that the landlord is seeking an Order of Possession at that time. From this evidence, I am satisfied that the tenant received the 10 Day Notice on or around October 10, 2019.

The landlord also set out a history of the subsidy scheme in place for the tenant and the monthly payment of rent, and the series of events prior to and after the late rent payment for October 1, 2019.

The landlord also clarified the tenant ledger included arrears that had accumulated over a period of time during the tenancy. At the time the Notice to End Tenancy was issued the outstanding arrears did not include arrears related to the end of the subsidy and the tenants increase in rent due to loss of subsidy. The ledger was printed in November 2019 and includes only one portion of rent that did not include subsidy. At the outset of the hearing, the

agent of the landlord acknowledged the current rent situation, as well as the difficulties the tenant has faced. In line with this, the landlord offered a continuing tenancy through to the end of February 2020.

The tenant confirmed that they did not pay rent in the immediate 5-day period after they received the 10 Day Notice. The tenant also confirmed that they did not file an Application for Dispute Resolution within the same legislated timeframe of five days from receipt of the 10 Day Notice. Regarding specific payments of rent, the tenant gave details of the difficult circumstances that presented themselves throughout the latter half of 2019. Despite family problems, the tenant was paying rent in increments throughout this time and gave details of amounts paid after the landlord served the 10 Day Notice.

Both the landlord and the tenant confirmed that they stayed in regular contact throughout the period of September through to December 2019. Communication was difficult for the tenant at times; however, I note both parties approached this hearing candidly and respectfully with the mutual intention to settle the matter. In the hearing I confirmed that the tenant is still occupying the rental unit. The landlord is fully aware of this fact, and discussions have been ongoing between the two parties regarding payment of rent and arrears owing.

Analysis

Section 46(4) allows a tenant who receives a notice to end tenancy under section 46 5 days to pay the overdue rent or submit an Application for Dispute Resolution to cancel the Notice. Section 46(5) stipulates that if a tenant fails to apply seeking to cancel the Notice, they are conclusively presumed to have accepted the tenancy ends on the effective date of the Notice and they must vacate the rental unit.

Based on the oral testimony, and in accordance with section 88 and 90 of the Act, I find that the tenant was deemed served with the 10 Day Notice on October 13, 2019 three days after its posting.

I accept the evidence before me that the tenant failed to pay the rent owed in full by October 18, 2019, within the five days granted under section 46(4) of the Act and did not dispute the 10 Day Notice within that five-day period.

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 10 Day Notice,

October 23, 2019. The landlord wrote the effective date as October 18, 2019 on the 10 Day Notice; I corrected this with the landlord acknowledging that error in the hearing.

Based on the evidence before me, I find the landlord is entitled to an Order of Possession. As per the landlord's request I will issue the Order for the date specified by the landlord in the hearing.

Conclusion

I grant an Order of Possession to the landlord effective **February 29, 2020**. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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 *Act*.

Dated: January 30, 2020

Residential Tenancy Branch