



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOOKOUT SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNR LAT LRE MNDCT PSF RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$3,300 pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. The landlord's residential manager ("**ML**") attended the hearing and was 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 Notice of Hearing. I also confirmed from the teleconference system that ML and I were the only ones who had called into this teleconference.

ML testified that the tenant did not serve him with the notice of dispute resolution proceeding package or any documentary evidence. ML testified that, instead, the tenant provided him two handwritten documents which provided the file number for the tenant's

application. ML then called the Residential Tenancy Branch, who, after first refusing so as to provide the tenant an opportunity to comply with his obligation to serve these documents on the landlord under the Act, provided ML with a copy of the dispute resolution proceeding package. The tenant uploaded no documentary evidence in support of his application.

ML testified that he served the landlord's evidence package on the tenant. However, upon my review of the landlord's evidence, I discovered that it did not include a copy of the Notice.

Preliminary Issue – Late Evidence

Under normal circumstances, evidence is not permitted to be entered into the record after the hearing commences. However, Rule of Procedure 3.19 provides the arbitrator the discretion to do so. In the circumstances, I find that the landlord is permitted to enter a copy of the Notice into evidence after the start of the hearing. I come to this decision because the tenant, in his application for dispute resolution, admitted to receiving it. Given that the tenant has applied to cancel the Notice, I find that he had ample opportunity to review it and would not therefore be prejudiced by its admission.

Preliminary Issue – Effect of Tenant's Non-attendance

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the landlord bears the onus to prove that the Notice is valid. The tenant bears the onus to prove the facts that support the other parts of his claim.

Rule 7.4 states

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

As the tenant did not attend this hearing, I find that he has failed to meet his evidentiary burden to prove any part of his application other than his application to cancel the Notice (which he does not bear the onus to do). Accordingly, I dismiss all portions of the tenant's application except that to cancel the Notice.

Issues to be Decided

Is the tenant entitled to the cancelation of the Notice?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, 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.

Neither party entered a copy of the tenancy agreement into evidence. ML testified that the tenant agreed to pay monthly rent of \$500 and provided the landlord with a \$250 security deposit at the start of the tenancy. The landlord still retains this deposit.

ML testified that the tenant failed to pay any portion of monthly rent from September 2019 to January 2020. He testified that the tenant's rental arrears are currently \$2,500.

ML testified that the landlord served the tenant the Notice on October 28, 2019 by posting it to the door of the rental unit. It listed an effective date of November 11, 2019 and stated that the tenant was \$1,000 in arrears. The landlord submitted a witnessed proof of service form, confirming service.

On his application of dispute resolution form, the tenant wrote that he received the Notice on November 30, 2019.

The tenant filed to dispute the Notice on November 30, 2019.

Analysis

In accordance with sections 88 and 90 of the Act, I find that the tenant was deemed served with the Notice on October 31, 2019 (three days after it was posted on the door of the rental unit.

I note that section 46(5) requires the tenant to file an application to dispute the Notice within five days of service or else be conclusively presumed to have accepted that the tenancy ended. The tenant did not do dispute the Notice within five days of October 31, 2019. Therefore, I find that the tenant's application to cancel the Notice must fail, and per section 55 of the Act, the landlord is entitled to an order of possession.

However, based on the contents of the application of the tenant, I understand that the tenant disputes the date of service of the Notice. In the event that I am mistaken in deeming that the Notice was served on October 31, 2019, I will consider the tenant's application to cancel the Notice as if the application to dispute it was filed in time.

As stated above, the landlord bears the onus to prove that the Notice is issued validly.

As such, the landlord must satisfy me that the tenant has failed to pay September and October 2019 rent.

I accept ML's uncontroverted testimony that monthly rent is \$500.

I accept ML's uncontroverted evidence that the tenant has failed to pay rent for the months of September and October 2019 in the combined amount of \$1,000. This is the amount stated on the Notice. I find that the tenant has not paid this amount owing to the landlord within five days of the Notice being served, or at all. Therefore, I find that the Notice is valid and properly issued.

I find that the Notice complies with section 52.

Section 55 of the Act states:

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.

Accordingly, I grant the landlord an order of possession against the tenant effective two days after service of this order by the landlord on the tenant.

I decline to make any order regarding the repayment of any rent owing, as no application of the landlord for repayment is before me. The landlord is cautioned to comply with its obligations under the Act with regards to the return of the security deposit.

Conclusion

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

I grant an order of possession to the landlord effective 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.

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 24, 2020

Residential Tenancy Branch