



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, MNDCT

Introduction

On November 14, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a repair Order pursuant to Section 32 of the *Act*, and seeking a Monetary Order for compensation pursuant to Section 72 of the *Act*.

On December 27, 2019, the Tenant amended her Application to increase the amount of compensation she was seeking.

The Tenant attended the hearing with J.L. attending as an advocate for the Tenant. The Landlord attended the hearing with A.H. attending as an agent for the Landlord. All parties provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package by hand to the Landlord on November 14, 2019 and the Landlord confirmed that she received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served the Notice of Hearing package.

The Tenant advised that she served her Amendment to the Landlord’s office by hand on December 27, 2019; however, the Landlord advised that the office was closed but she discovered this Amendment on December 30, 2019 as it was slid under the door of the office. As this Amendment was not served within the timeframe requirements of Rule 4.6 of the Rules of Procedure or served in a manner in accordance with Section 88 of the *Act*, I have dismissed this Amendment with leave to reapply.

The Tenant advised that she served her evidence to the Landlord in three separate packages. She stated that she served the inspection report to the Landlord on December 27, 2019 by slipping it under the door of the Landlord’s office. She stated that she also served two statements to the Landlord’s receptionist by hand on January 6, 2020.

The Landlord confirmed that she received the inspection report on December 30, 2019, that she had reviewed this report, and that she was prepared to respond to it. Despite this evidence not being served within the timeframe requirements of Rule 3.14 of the Rules of Procedure or served in a manner in accordance with Section 88 of the *Act*, as the Landlord was prepared to respond to it, I have accepted this evidence and will consider it when rendering this decision. Regarding the Tenant's statements, the Landlord advised that she did not receive them. Regardless, as these were not served within the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this decision.

The Landlord advised that she served her evidence to the Tenant by posting it to the Tenant's door on December 31, 2019 and the Tenant confirmed receipt of this evidence on January 2, 2020. Based on the undisputed testimony, and as this evidence was in response to the Tenant's late evidence, I have accepted 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 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?
- 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 tenancy started on May 1, 2018 and that rent was established at \$1,800.00 per month, due on the first day of each month. A security deposit of \$900.00 was also paid.

The Landlord advised that the Notice was served to the Tenant on October 5, 2019 by being posted to her door. She stated that it was served because of rent that was due on October 1, 2019. The amount listed as outstanding on the Notice was \$1,799.00. It also indicated that the effective end date of the tenancy was November 18, 2019.

The Tenant acknowledged receiving this Notice on October 5, 2019. She stated that she did not pay the rent or dispute the Notice within five days of receiving the Notice. She acknowledged withholding the rent due to repair issues that she believed the Landlord had neglected. However, she did not have any authority under the *Act* to withhold this rent. As well, she believed that she had 30 days to dispute the Notice.

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.

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.

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 received the Notice on October 5, 2019. According to Section 46(4) of the *Act*, the Tenant has 5 days 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 Tenant received the Notice on October 5, 2019, the Tenant must have paid the rent in full or disputed the Notice on October 10, 2019 at the latest. However, the undisputed evidence is that the Tenant had not paid rent since receiving this Notice and only made this Application on November 14, 2019. The Tenant also advised that she did not have any authority under the *Act* which permitted her to withhold the rent. As the Tenant did not pay the rent and she was late in making this Application, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

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 52 and 55 of the *Act*.

Conclusion

Based on the above, I dismiss the Tenant's Application to dispute the Notice in its entirety. 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 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 7, 2020

Residential Tenancy Branch