



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR MNDCT

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 November 19, 2019 (10 Day Notice), for a monetary claim of \$2,000.00 for emergency repairs.

The landlords and the tenants attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The landlords testified that they were not served with the Notice of Dispute Resolution Proceeding (Notice of Hearing) document, and only became aware of the hearing by contact the Residential Tenancy Branch (RTB). As a result of the above, the tenants were asked how they served the landlords. Tenant JS (tenant) testified that the landlords were served by taping the Notice of Hearing package to the landlords' door. The landlords testified that there was no package taped to their door.

Preliminary and Procedural Matters

Firstly, Rule 2.3 of the RTB Rules of Procedure (Rules) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 10 Day Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only

consider the tenants' request to cancel the 10 Day Notice at this proceeding. The balance of the tenants' application is dismissed, with leave to re-apply.

Once the tenant's monetary claim was severed as noted above, the parties were advised that section 89(1) of the Act applies and states:

Special rules for certain documents

89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Based on the above, I find the tenants failed to serve the landlords in a method permitted under section 89(1) of the Act and therefore, I dismiss the tenants' application due to a service issue, without leave to reapply. As the tenants are now beyond the 5-day statutory timeline to dispute a 10 Day Notice under section 46 of the Act, I do not grant the tenants leave to reapply.

I will deal with the order of possession pursuant to section 55 of the Act below.

In addition to the above, and at the outset of the hearing the parties confirmed their email addresses. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party for service on the other party.

Background and Evidence

The 10 Day Notice submitted in evidence is dated November 19, 2019 and lists the effective vacancy date as November 29, 2019. The 10 Day Notice was filled out by the landlords completely.

The landlords testified that the tenants have failed to pay rent for ½ of November 2019, all of December 2019 and all of January 2020. The tenants continue to occupy the rental unit. The landlords state the 10 Day Notice was posted to the tenants' door on November 19, 2019. The tenants wrote on their application that the 10 Day Notice was received November 19, 2019.

Analysis

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

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 reviewing a copy of the 10 Day Notice, which had an effective vacancy date of November 29, 2019, which I find complies with section 52 of the *Act*, and pursuant to section 55 of the *Act*, I must grant an order of possession as the tenants' application was dismissed due to a service issue. Therefore, I grant the landlords an order of possession effective **two (2) days** after service on the tenants. I find the tenancy ended on November 29, 2019, which was the effective vacancy date

listed on the 10 Day Notice as the tenants confirmed that they received the 10 Day Notice on November 19, 2019.

Conclusion

The tenants' application is dismissed due to a service issue.

The tenancy ended on November 29, 2019, which was the effective vacancy date listed on the 10 Day Notice.

The landlords have been granted an order of possession effective two (2) days after service on the tenants. This order must be served on the tenants 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 landlords for service on the tenants.

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: January 21, 2020

Residential Tenancy Branch