



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

ET FFL AAT CNR OLC PSF RP

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- An early end of the tenancy pursuant to section 56; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- An order that the landlord allow access to the rental unit pursuant to section 70;
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- An order that the landlord provide services or facilities pursuant to section 65; and
- An order that the landlord perform repairs pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was assisted by an advocate.

The tenant testified that they were served with the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated December 8, 2019 (the “10 Day Notice”) on that date. The tenant testified that they filed their application for dispute resolution on December 18, 2019 and served the landlord with their application and materials. The landlord confirmed receipt of the tenant’s materials. Based on the evidence I find that

the tenant was served with the 10 Day Notice on December 8, 2019 in accordance with section 88 of the Act and that the landlord was served with the tenant's materials in accordance with sections 88 and 89 of the Act.

The landlord testified that they served the tenant with their application and evidence. The landlord said that they served the tenant by leaving the materials at the tenant's address. The landlord did not provide documentary evidence in support of their submission. The tenant disputed that they were served with the landlord's materials.

Based on the paucity of the evidence provided by the landlord and the testimony of the parties, I find that I am not satisfied on a balance of probabilities that the tenant has been served with the landlord's materials in accordance with the Act, or at all. Consequently, I dismiss the landlord's application.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to any of the other relief sought?

Background and Evidence

The parties agree on the following facts. This periodic tenancy began in November 2018. The tenant is responsible for paying the electrical utilities to the landlord. The landlord gave written notice to the tenant of a \$90.00 arrear for unpaid utilities on November 8, 2019. The landlord subsequently issued a 10 Day Notice dated December 8, 2019 for that amount. The tenant did not make any payments against the arrear.

The landlord testified that monthly rent is \$475.00 payable by the third week of each month. The landlord also said that they provide the tenant with written notice of the amount payable for utilities each month.

The tenant gave evidence that rent is \$375.00. The tenant disputed that the landlord informs the tenant of the amount payable for utilities and said that the amount was initially set at \$50.00 and recently increased to \$100.00. The tenant disputes that there

is any arrear and testified that they have paid the monthly amount in full for the duration of the tenancy.

Both parties gave some evidence alluding to the deterioration of their relationship and ongoing conflicts.

Analysis

Pursuant to section 46(6) of the *Act*, if a tenancy agreement requires a tenant to pay utility charges to the landlord and the charges remain unpaid more than 30 days after the tenant is given written demand for payment the unpaid utility charges may be treated as unpaid rent and a landlord may issue a notice to end tenancy for non-payment.

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In the present circumstance, the tenant testified that they received the 10 Day Notice on December 8, 2019, and filed a notice of dispute application on December 18, 2019, outside of the timeline provided under the *Act*. Subsection 5 provides that a tenant who does not file an application to dispute the notice within the five days provided is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. Therefore, I dismiss the tenant's application to dispute the 10 Day Notice as it was filed outside of the statutory time limits.

Section 55 of the *Act* provides that:

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.

I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52. It is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end. I am satisfied by the evidence of the parties that the landlord gave written notice to the tenant of the utility arrear 30 days prior to issue the 10 Day Notice.

While neither party provided documentary evidence to demonstrate the utility payments owing, I find the landlord's explanation of how they calculated the utility arrear to be cogent, reasonable and consistent with the materials presented. I do not find the tenant's testimony that they have paid utilities in the amount of \$100.00 each month to be supported in any of the documentary materials, consistent with the description of the parties' ongoing relationship or persuasive.

Therefore, as I have dismissed the tenant's application and I find that the 10 Day Notice complies with the form and content requirements of the Act, I find that the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

As this tenancy is ended I find it unnecessary to make a finding on the balance of the tenant's application.

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service 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: February 21, 2020

Residential Tenancy Branch