



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Koiter Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR LRE MNDCT OLC AS

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 10 Day Notice) pursuant to section 46.
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find that the landlord was duly served copies of the tenant's application. All parties confirmed receipt of each other's evidentiary materials.

The tenant confirmed receipt of two 10 Day Notices to End Tenancy. The tenant was served with a 10 Day Notice dated January 4, 2020, on January 5, 2020, and another 10 Day Notice dated March 1, 2020, on March 2, 2020, both of which were posted on her door. Accordingly, I find that the tenant was deemed served with the 10 Day Notices 3 days after posting, in accordance with sections 88 and 90 of the *Act*. Both parties

confirmed that they consented to the consideration of both 10 Day Notices for the purposes of this hearing.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard, I find the tenant has applied for a monetary award for losses related to this tenancy. As both parties wanted more time to discuss a potential resolution in regards to the tenants' monetary application, and the tenants' monetary application is unrelated to the main section of this dispute which is to cancel the 1 Month Notice, I am dismissing the tenants' application for monetary compensation with leave to reapply

Issues to be Decided

Should the landlord's 10 Day Notices be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This month-to-month tenancy began on April 1, 2019. The tenant moved to a different rental unit in May of 2019. The monthly rent is currently set at \$850.00, payable on the first of every month. The tenant paid a security deposit in the amount of \$400.00, which the landlord still holds.

The landlord served the tenant with a 10 Day Notice for Unpaid Rent on January 5, 2020, and another 10 Day Notice on March 2, 2020 for failing to pay the rent.

The tenant does not dispute that she has failed to pay rent for January through to March 2020. The tenant testified that she was unable to pay the monthly rent as she had originally resided with another party, and the landlord does not consent to her obtaining a new roommate.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the

tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I have considered the testimony of both parties in the hearing, as well as the tenant's evidence submitted for this application. I find it undisputed that the tenant failed to pay rent for the months of January through to March 2020. I find that the tenant did not have permission to withhold or deduct any rent, and accordingly I find that the tenant has failed to pay the outstanding rent as required by the *Act*. On this basis, I dismiss the tenant's application to cancel the two 10 Day Notices issued to her.

Section 55(1) of the *Act* reads as follows:

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.

I find that the 10 Day Notices comply with section 52 of the *Act*. I, therefore, find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I dismiss the tenant's application to cancel the landlord's two 10 Day Notices. I find that the landlord's 10 Day Notices to be valid. I, therefore, grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant and any occupant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

The remaining portion of the tenant's application is dismissed with leave to reapply.

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: March 20, 2020

Residential Tenancy Branch