



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46.

The tenant, the landlord and the landlord's agent (S.D.) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenant personally served the landlord with his application for dispute resolution in January of 2020. I find that the landlord was served, in accordance with section 89 of the *Act*.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the "application") 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 or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue- Amendments

The tenant's application for dispute resolution mis-spelled the landlord's first name and included the landlord's agent as a landlord. Pursuant to section 64 of the *Act*, I amend the tenant's application to state the correct spelling of the landlord's first name and to remove the landlord's agent from the style of cause.

Issues to be Decided

1. Is the landlord entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*?
2. If the tenant's application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. The subject rental property is a house with an upper suite, a lower suite, and a lower mini suite consisting of a bedroom room and bathroom. The tenant moved into the lower suite of the subject rental property without the knowledge of the landlord when a different tenant moved out.

The tenant testified that he moved into the lower suite in the beginning of May 2019. The landlord testified that she did not know when the tenant moved in. Both parties agreed that rent for the lower suite is \$800.00 per month due on the first day of each month.

Both parties agreed to the following facts. R.K. resided in the mini suite and acted as an agent for the landlord collecting rent for the entire subject rental building and providing it to the landlord. S.D. moved into the upper suite of the subject rental building in August 2019 and took over R.K.'s agent duties beginning in September of 2019 because R.K. moved out of the mini suite at the end of October 2019.

Both parties agreed that the tenant gave his rent for September and October 2019 to R.K. which was subsequently given to the landlord by R.K.

The tenant testified that he gave R.K. his rent for November 2019 and that R.K. did not pass this rent on to the landlord.

The landlord and S.D. testified that R.K. told them that the tenant did not give him November 2019's rent as he moved out of the mini suite on October 28, 2019 and was not present at the end of the month. The landlord entered into evidence a letter from R.K. stating same.

Both parties agree that the tenant paid \$710.00 of November 2019's rent in installments throughout the month. S.D. testified that the tenant told her that he was late paying rent because R.K. owed him money for some work he did for him. S.D. testified that she did not hear of the tenant's allegation that R.K. stole the tenant's rent money until the tenant filed this application for dispute resolution. The tenant disputed the above testimony. The tenant did not enter any documentary evidence to prove that he informed the landlord or tenant S.D. of the alleged theft from R.K prior to his application for dispute resolution.

Both parties agree to the following facts. December 2019's rent was paid in full. January 2020's rent was not paid. \$550.00 was paid by the tenant towards February 2020's rent and no rent was paid for March 2020.

The landlord and S.D. testified that the tenant currently owes \$1,940.00 in unpaid rent. The tenant testified that he only owes \$1,140.00 in unpaid rent because he paid R.K., the landlord's agent, \$800.00 for November 2019's rent which is why he got behind in his rent payments.

S.D. testified that the landlord instructed her to serve the tenant with a 10 Day Notice to End Tenancy for unpaid rent (the "10 Day Notice") and that she did so in person on January 3, 2020. The 10 Day Notice was entered into evidence and states that the tenant failed to pay \$800.00 in rent due on January 1, 2020. The 10 Day Notice has an effective date of January 14, 2020. The tenant confirmed receipt of the 10 Day Notice on January 3, 2020.

Analysis

I find that service of the 10 Day Notice was effected on the tenant on January 3, 2020, in accordance with section 88 of the *Act*. Upon review of the 10 Day Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

The tenant did not enter into evidence any documentation such as text messages, emails or letters showing that he informed the landlord or S.D. of the alleged theft. I find that had the tenant's rent money been stolen by the landlord's agent he would have informed the landlord of the theft as soon as he became aware of it and there would have been some discourse on the issue. In the alternative, I find that had the tenant's November rent money been stolen by the landlord's agent, the tenant would only owe \$800.00 in unpaid rent. In this case however, the tenant acknowledges owing \$1,140.00 in unpaid rent. Based on the above, I find that the tenant's testimony lacks an air of reality and I accept the landlord's submissions over those of the tenant.

I find that the landlord has proved, on a balance of probabilities, that the tenant failed to pay rent when it was due and did not pay the overdue rent stated on the 10 Day Notice within five days of receiving it. Therefore, pursuant to section 46 of the *Act*, the tenant's application for dispute resolution is dismissed.

Section 55 of the *Act* states 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 since the 10 Day Notice complies with section 52 of the *Act* and the tenant's application to cancel the 10 Day Notice was dismissed, the landlord is entitled to a two-day Order of Possession.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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: March 09, 2020

Residential Tenancy Branch