



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 08, 2020 (the “Application”). The Tenant disputed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 03, 2020 (the “Notice”).

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

During the hearing, the Landlord confirmed that any orders should be in the business name noted on the Notice and this is what has been included in the style of cause.

The Tenant had submitted evidence prior to the hearing. I did not have evidence before me from the Landlord at the hearing.

The Landlord confirmed receipt of the hearing package and Tenant’s evidence.

The Landlord testified that he submitted evidence at a Service BC location March 06, 2020. The Landlord testified that he served this evidence on the Tenant on March 06, 2020. The Tenant denied receiving the Landlord’s evidence.

I asked the Landlord why the evidence was served so late. The Landlord testified that he misplaced the hearing documents with the access code. He said he thought he had to submit the evidence to the RTB before serving it on the Tenant. He said this was based on a previous Direct Request proceeding he was involved in.

I outlined the issues I had with service of the Landlord's evidence including that I did not have it before me, I was not satisfied it was served on the Tenant in the absence of further evidence to support the Landlord's position on this and the evidence was served late. I note that it was open to the Landlord to serve his evidence on the Tenant prior to submitting it to the RTB and losing the access code has no bearing on when the Landlord served the Tenant. These are not Direct Request proceedings and there is no such rule that the Landlord must submit evidence to the RTB before serving it on the Tenant.

I asked the parties for their position on whether the Landlord's evidence should be admitted or excluded given I was not satisfied it was served in accordance with the Rules of Procedure. Both parties agreed it should be excluded. The Landlord's evidence is therefore excluded. Given this, I did not ask the Landlord to re-submit the evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the Tenant's documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession based on the Notice?

Background and Evidence

The parties agreed on the following. There is a written tenancy agreement in this matter. It is between the Tenant and the Landlord, who is the resident manager. The tenancy started June 28, 2018 and was for a fixed term of one year then became a month-to-month tenancy. Rent is \$1,250.00 per month due on the first day of each month.

The Tenant submitted two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities. One is dated January 02, 2020. It shows outstanding rent of \$2,210.00 due January 01, 2020. It is addressed to the Tenant and relates to the rental unit. It is signed and dated by the Landlord and has an effective date of January 12, 2020. The Landlord agreed to this notice being cancelled and therefore it is cancelled.

The Notice states that the Tenant failed to pay \$3,235.00 in rent that was due January 01, 2020. It is addressed to the Tenant. It includes the rental unit address under "Tenant Address". In the second address section it includes the correct street number, street name, city, province and postal code. It includes the Landlord's unit number rather than the unit number of the rental unit address.

There was no issue that the Tenant received the Notice January 03, 2020, although the parties disagreed about how the Notice was served. The Landlord testified that it was posted to the door of the rental unit. The Tenant testified that it was handed to him personally. The Tenant testified that he only received the first page of the Notice.

The Tenant testified as follows in relation to the first basis for his dispute of the Notice. The Notice has the wrong unit number. He did not know the Notice related to him because of this and because the rent amount is wrong.

The Tenant acknowledged he had received the notice dated January 02, 2020 the day before he received the Notice.

The Tenant testified as follows in relation to the second basis for his dispute of the Notice. He made further rent payments that are not noted on the rent ledger submitted. The Landlord did not always give receipts for cash payments the Tenant made. The Landlord would not give him an envelope the Landlord had with all of the Tenant's payments outlined on it. The Tenant did find two receipts which have been submitted. The receipts show the rent ledger is wrong.

The Tenant, Landlord and I went through the rent ledger during the hearing. After doing so, the Tenant acknowledged that the receipts he submitted actually support the accuracy of the rent ledger rather than contradict it.

The Tenant acknowledged he does not have a record of the further rent payments he made to the Landlord.

The Tenant acknowledged that some rent was outstanding when the Notice was issued but denied \$3,235.00 was outstanding.

The Tenant acknowledged he did not have authority under the *Residential Tenancy Act* (the "Act") to withhold rent.

The Landlord testified that the rent ledger in evidence is accurate. The Landlord confirmed \$3,235.00 in rent was outstanding when the Notice was issued. The Landlord testified that there is a strict policy in place for cash payments which involves a requirement that cash payments be made at the office, the cash be counted and a receipt be provided. The Landlord denied that he ever accepted cash payments without issuing a receipt.

The Landlord testified that the Tenant has not paid any rent since the Notice was issued. The Tenant agreed with this.

The Landlord asked that an Order of Possession be effective March 23, 2020 if issued.

Analysis

Section 26(1) of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement unless the tenant has a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 state:

46 (1) 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.

(2) A notice under this section must comply with section 52...

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) 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...

Section 55(1) of the *Act* requires an arbitrator to issue an Order of Possession when a tenant disputes a notice to end tenancy and the application is dismissed or the notice is upheld. The notice must comply with section 52 of the *Act*.

Pursuant to rule 6.6. of the Rules, it is the Landlord who has the onus to prove the grounds for the Notice.

There is no issue that the Tenant is required to pay \$1,250.00 in rent by the first day of each month under the tenancy agreement. The Tenant did not take the position that he had authority under the *Act* to withhold rent. I find the Tenant was required to pay \$1,250.00 in rent by the first day of each month under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

I do not accept that the Tenant made rent payments that are not reflected on the rent ledger in evidence. The rent ledger provides a detailed outline of rent amounts owing, rent amounts paid and the date payments were made.

The Tenant testified that the Landlord did not always issue receipts for cash payments. The Landlord testified that he always issued receipts for cash payments. The Tenant submitted two receipts in evidence. I find these receipts support the Landlord's position that receipts were issued for cash payments. I am satisfied based on the testimony of the Landlord and receipts submitted that receipts were issued for cash payments.

The receipts submitted support that the rent ledger is correct. The dates and amounts on the receipts match the rent ledger entries.

I am satisfied based on the testimony of the Landlord, rent receipts and rent ledger that the Tenant owed \$3,235.00 in rent as of January 01, 2020. I find the rent receipts and rent ledger to be reliable evidence. The Tenant has not provided any further evidence to support his position that he made further payments that are not recorded on the rent ledger. I am not satisfied that the Tenant did.

Given the Tenant had failed to pay rent as required on January 01, 2020, the Landlord was entitled to serve him with the Notice pursuant to section 46(1) of the *Act*.

I am satisfied the Notice was served on the Tenant in accordance with the *Act* whether it was posted on the door of the rental unit (as permitted by section 88(g) of the *Act*) or handed to the Tenant personally (as permitted by section 88(a) of the *Act*). Based on the testimony of the Tenant, I am satisfied the Tenant received the Notice January 03, 2020.

I acknowledge that the Tenant testified that he only received one page of the Notice. I do not find this to be an issue here as the important aspect of the second page is the

information about disputing the Notice. I am satisfied the Tenant was aware of this information as he did dispute the Notice and did so in time.

The Tenant submitted that the Notice includes the wrong rental unit address and he did not know the Notice applied to him given this error as well as an error in the rent amount owing. I do not accept this submission.

The Tenant acknowledged that he had received the notice dated January 02, 2020 the day before receiving the Notice. The notice dated January 02, 2020 is addressed to the Tenant and includes the correct rental unit address in two locations. The Tenant acknowledged receiving the Notice the next day, on January 03, 2020. It is addressed to the Tenant. It includes the correct rental unit address under "Tenant Address" on the form. The unit number included in the second location for the rental unit address is clearly the Landlord's unit number. I am satisfied the rent amount owing is correct as explained above. The Tenant testified that the Notice was handed to him personally.

I do not accept that there could be any reasonable confusion about whether the Notice applied to the Tenant in all of the above noted circumstances. Further, the Tenant disputed the Notice. It does not accord with common sense that the Tenant would dispute the Notice if he did not think it applied to him.

Section 68(1) of the *Act* states:

68 (1) If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

Given the above, I am satisfied the Tenant should have known the Notice applied to him and would have known his own address, which is included on the Notice under "Tenant Address". I find it reasonable to amend the Notice given the above comments. I do amend the Notice to include the correct unit number in the second location for the rental unit address.

Upon a review of the Notice, and considering the amendment, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the Notice on January 03, 2020 to pay the outstanding rent or dispute the Notice under section 46(4) of the *Act*. There is no issue that the Tenant has not paid any rent since the Notice was issued. The Tenant disputed the Notice January 08, 2020, within the five-day time limit set out in section 46(4) of the *Act*.

However, I do not accept that the Tenant had a valid basis to dispute the Notice and therefore dismiss the Application. I also find the Notice to be valid and uphold it.

Given I have dismissed the Application, upheld the Notice and found that the Notice complies with section 52 of the *Act*, the Landlord is entitled to an Order of Possession under section 55(1) of the *Act*. The Landlord is issued an Order of Possession effective at 1:00 p.m. on March 23, 2020.

Conclusion

The Tenant's dispute of the Notice is dismissed. The Landlord is issued an Order of Possession effective at 1:00 p.m. on March 23, 2020. This Order must be served on the Tenant. If the Tenant does not comply with this Order, it may be filed in the Supreme Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 11, 2020

Residential Tenancy Branch