



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES KOOTENAY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RP, FFT, OPR-DR

Introduction

This hearing dealt with cross applications filed by the parties. On March 16, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a repair Order pursuant to Section 32 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On March 23, 2020, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act*. On March 27, 2020, this Application was set down for a participatory hearing to be heard as a cross application with the Tenant’s Application on April 23, 2020 at 9:30 AM.

The Tenant attended the hearing and S.W. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing package by hand to an employee in the Landlord’s office on or around March 24, 2020. S.W. confirmed that he received this package on March 27, 2020. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

S.W. advised that he served the Notice of Hearing and evidence package to the Tenant by hand on March 29, 2020 and the Tenant confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Notice of Hearing and evidence package.

The Tenant advised that he served his evidence to the Landlord by hand, but he is not sure when he did this. S.W. confirmed that he received this evidence, that he reviewed it, and that he was prepared to respond to it. As such, I have accepted the Tenant’s evidence and will consider it when rendering this decision.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent, that his other claim would be dismissed, and that he is at liberty to apply for this claim under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution 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 and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 1, 2018, that the rent was owed in the amount of \$875.00 per month, and that it was due on the first day of each month. A security deposit of \$437.50 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

S.W. advised that the Notice was served to the Tenant by posting it on his door on March 13, 2020 and the Tenant confirmed that he received the Notice on this date. S.W. stated that \$1,908.30 was outstanding on March 1, 2020 as the Tenant was in arrears for rent from May and July 2019, and he did not pay March 2020 rent in full either. He also stated that the Tenant has not paid rent in full for April 2020. The effective end date of the tenancy on the Notice was noted as March 26, 2020.

S.W. stated that he had a verbal agreement to allow the Tenant to pay the May and July 2019 arrears in installments over six months in 2019; however, the Tenant did not make those payments entirely. He also stated that the Tenant was mistakenly double billed for rent in May 2019, but that was credited back to the Tenant, with an additional \$50.00 credit payment for the mistake.

The Tenant confirmed that he was double charged for rent in May 2019 but that the correct amount was credited back to him. He agreed that he had a verbal agreement with S.W. to pay the arrears over the six-month period, but he was not able to abide by those conditions. As such, he advised S.W. of his financial situation. He stated that he made good faith payments to S.W. and that he was never informed by S.W. that the outstanding rent was being sought, until he received the Notice. He stated that the Landlord had refused partial payment of rent from a society in the amount of \$275.00, and that it is his belief that the Landlord should have accepted this towards the outstanding arrears. As well, it is his belief that he is owed \$65.00 from the Landlord for burnt out lightbulbs. The Tenant confirmed that the amount in arrears on the Notice is correct, that he did not have any written or verbal authorization not to pay this amount, and that he did not have any authority under the *Act* to withhold this amount of rent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent. The consistent evidence before me is that the Tenant received the Notice on March 13, 2020. According to Section 46(4) of the *Act*, the Tenant has 5 days, after being served the Notice, to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the fifth day fell on March 18, 2020, the Tenant must have paid the rent in full or made his Application to dispute the Notice on this date at the latest. The undisputed

evidence is that the Tenant did not pay the rent in full and did not have a valid reason under the *Act* for withholding the rent.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*.

As the Tenant was not successful in this application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

The Landlord is provided with a formal copy of an Order of Possession effective **two days after service of this Order** 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: April 23, 2020

Residential Tenancy Branch