



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

On February 29, 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”) and seeking an Order to comply pursuant to Section 62 of the *Act*.

The Tenant attended the hearing and both Landlords attended the hearing as well. All in attendance provided a solemn affirmation.

The Tenant advised that she did not serve the Landlords the Notice of Hearing or her evidence package as she had signed a Mutual Agreement to End a Tenancy on March 17, 2020 with an effective end date of March 30, 2020. The Landlords confirmed that they signed this document as well and that the only reason they knew about this hearing was because they were given the information to call in by the Residential Tenancy Branch. Based on this undisputed testimony, as I am satisfied that the Landlords were not served with the Notice of Hearing package in accordance with Section 89 of the *Act*, I dismiss the Tenant’s Application with respect to the Notice without leave to reapply.

The Landlords advised that their evidence was served to the Tenant by posting it to her door on March 27, 2020 and the Tenant confirmed that she received this package. The reason the Landlords served this evidence so late is because the Tenant never served them any documentation of the details of this dispute. While this evidence was not served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, as the Tenant did not serve any documents to the Landlord to inform them of this dispute, and as the Tenant received these documents, I have accepted the Landlords’ evidence and will consider it when rendering this decision.

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.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. During the hearing, I advised the parties that this hearing would address matters related to the Notice only, and that the other claim was dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

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 Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?

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 12, 2019 and that rent was established at \$1,175.00 per month, due on the first day of each month. A security deposit of \$550.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

Landlord M.S. advised that the Notice was served by posting it to the Tenant's door on February 27, 2020 and the Landlords submitted a proof of service document confirming this. She advised that the Notice indicated that \$1,175.00 was outstanding on February

1, 2020 and that the Tenant has not paid March rent either. The Notice indicated that the effective end date of the tenancy was March 12, 2020.

The Tenant acknowledged that she received this Notice on or around February 27, 2020. As well, she acknowledged that despite the Notice not indicating that the dispute address was the “basement”, she agreed that she knew the Notice pertained to her tenancy. She stated that as per text messages with the Landlords, she had written authorization to pay rent on the 18th day of every month. However, when pressed, she acknowledged that she did not have this written authorization. She then stated that she had a verbal agreement with the Landlords and that she paid February 2020 rent by electronic transfer on February 21, 2020 but for some reason, the Landlords did not receive this. She also acknowledged that there were no dates on her electronic transfer documents confirming that this money was transferred on that date as she alleged. She confirmed that she did not pay any rent for March 2020 as she was not sure if she had to or not based on the dispute.

The Landlords acknowledged having conversations with the Tenant in the past about late rent and that they were trying to work with the Tenant to receive the rent owed. However, they did not have any agreement with the Tenant that rent would be paid on the 18th day of each month, contrary to the tenancy agreement. As well, they referenced copies of their bank statement for February 2020 and March 2020 confirming that no electronic transfers of funds were sent by the Tenant.

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.

I have reviewed the Landlords’ 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. 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.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant received the Notice on or around February 27, 2020. According to Section 46(4) of the *Act*, the Tenant has 5 days 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 Mar 3, 2020, the Tenant must have paid the rent in full or disputed the Notice by this day at the latest. The undisputed evidence is that the Tenant made this Application on February 29, 2020.

Based on the evidence before me, while the Tenant alleges to have paid the rent by electronic transfer on February 21, 2020, she has provided insufficient evidence to support this. In addition, the Landlords have provided evidence that they did not receive any electronic transfers of payment of rent from the Tenant in February 2020, nor any rent payments within five days of the Tenant receiving the Notice. As such, I am satisfied, on a balance of probabilities, that the Tenant did not pay the rent in full when it was due, nor was it paid within five days of the Tenant receiving the Notice. Moreover, there is no evidence before me that the Tenant had a valid reason for withholding the rent pursuant to the *Act*.

As the Notice was served in accordance with Section 88 of the *Act*, as the Landlords' Notice is valid, as the Tenant's Application was dismissed, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlords are entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

Conclusion

I dismiss the Tenant's Application and I grant an Order of Possession to the Landlords effective **two days after service of this Order** 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: April 3, 2020

Residential Tenancy Branch