



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, RR, LRE, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for the following remedies:

- to cancel a 10 Day Notice to End Tenancy for unpaid rent dated February 17, 2020 ("10 Day Notice");
- a monetary claim of \$500.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement;
- an Order to reduce the rent by \$250.00 for repairs, services or facilities agreed upon but not provided;
- to suspend or restrict the Landlords' right to enter; and
- to recover the \$100.00 cost of his Application filing fee.

The Landlords appeared at the teleconference hearing and gave affirmed testimony, but no one attended on behalf of the Tenant. The teleconference hearing was open for over 15 minutes, but no one called in on the Tenant's behalf. The Landlords said they served the Tenant with their documentary evidence in reply to the Tenant's Application by posting it on the rental unit door on April 9, 2020.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Landlords were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Rule 7.1 of the Residential Tenancy Branch Rules of Procedure ("Rules") states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Landlords and I attended the hearing on time and were

ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 9:30 a.m. on April 20, 2020, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for minutes, however, neither the Applicant nor an agent acting on his behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I **dismiss the Tenant's Application wholly without leave to reapply.**

Early in the hearing, the Landlords confirmed the correct spelling of their names. They said that the Tenant had provided incorrect names on the Application and they provided me with their correct names. Accordingly, I amended the Respondents' name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

The Landlords also advised me that the Tenant had served only one of them with the Application and Notice of Hearing documents, contrary to Rule 3.1. As a result, I find that the Application was not properly served on the Respondents, which is another reason to dismiss the Tenant's Application.

Preliminary and Procedural Matters

The Tenant's email address was in his Application. The Landlords provided their email address at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties, with any orders emailed to the appropriate Party.

Section 55 of the Act states that if a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52, I must grant the landlord an order of possession.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Are the Landlords entitled to an Order of Possession?

Background and Evidence

The Landlords confirmed the evidence in the tenancy agreement, which indicates that

the tenancy began on October 5, 2018, with a monthly rent of \$1,000.00 due on the fifth day of each month. The Landlords said the Tenant paid them a security deposit of \$500.00 and no pet damage deposit.

The Landlords said they issued the 10 Day Notice, because the Tenant owed them \$6,000.00 in unpaid rent at that time, which they said included \$1,000.00 owing per month for each month since September 2019 through February 2020. As of the date of the hearing, the Landlords said the Tenant has not paid them anything since August 2019 and now owes them \$8,000.00

The Landlords said they served the Tenant with the 10 Day Notice in person in the presence of an RCMP officer on February 18, 2020. They provided an RTB form: “#RTB-34 Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities” in their written submissions to support this testimony.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Landlord’s notice: non-payment of rent

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.

...

(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.

(5) 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

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

The Tenant applied for dispute resolution, but he did not attend the hearing to pursue his claim against the Landlords’ evidence.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice on February 18, 2019, when it was served to him by the Landlords in person, in the presence of an RCMP officer.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. This requirement is unless the tenant has a right under the Act to deduct all or a portion of the rent. In the hearing, the Landlord said that they were owed \$8,000.00 in unpaid rent as of April 5, 2020.

Based on the above, I find that the amount of rent outstanding listed on the 10 Day Notice of \$6,000.00 is incorrect, as it was based on outstanding rent amount for February 5, 2020. However, as there is no monetary claim before me for rent, I must determine whether the 10 Day Notice is valid, not the exact amount of rent outstanding.

I find that the 10 Day Notice was signed, dated, had the rental unit address, and the effective vacancy date of February 27, 2020. I find it was served in person on February 18, 2020. I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenant did not attend the hearing to provide testimony as to why the rent was not paid, and he did not provide any documentary evidence establishing that he had a right under the Act to deduct all or a portion of the \$6,000.00 in rent owed for September 2019 through to and including February 5, 2020. Therefore, I find that the Tenant's Application to cancel the 10 Day Notice is dismissed without leave to reapply.

As a result, I find that the Landlords are entitled to an Order of Possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed, and the undisputed evidence before me is that the Tenant has not paid rent for over eight months, the Order of Possession will be effective **two days after service** of the Order on the Tenant.

Conclusion

The Tenant has not paid rent for more than the last eight months, therefore, his Application is dismissed without leave to reapply. Pursuant to section 55 of the Act, I grant the Landlords an Order of Possession effective **two days after service of this Order** on the Tenant. The Landlords are provided with this Order in the above terms

and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 20, 2020

Residential Tenancy Branch