



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, LRE, AAT, LAT, RR, OLC

Introduction

This hearing dealt with the tenant's applications pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- authorization to change the locks, pursuant to section 31;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- Order to Allow Access for the Tenant or their guests, pursuant to sections 30 and 70.

The tenant and the landlord's agent 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 served the landlord with both applications for dispute resolution via registered mail. I find that the landlord was served with the tenant's applications for dispute resolution 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- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the One Month Notice to End Tenancy for Cause and the 10 Day Notice to End Tenancy for Unpaid rent and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notices to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notices to End Tenancy. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the Notices to End Tenancy.

Preliminary Issue- Tenant's Behaviours

The tenant was disrespectful and discourteous throughout the entire hearing. I cautioned the tenant on numerous occasions to stop talking over myself and the landlord and to abandon irrelevant testimony aimed at maligning the landlord's character. The tenant did not listen to my cautions which resulted in me muting the tenant's telephone line on multiple occasions for brief periods of time. On one such occasion, at the end of the hearing, the tenant hung up. No new testimony was heard from the landlord after the tenant hung up.

Preliminary Issue- Evidence

Neither party entered into evidence a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or the One Month Notice to End Tenancy. I allowed both parties an opportunity after the hearing to upload the Notices to End Tenancy. The landlord

uploaded a copy of both Notices to End Tenancy after the hearing, which I have accepted into evidence. I find that neither party is prejudiced by the late evidence as both parties confirmed they had copies of the Notices to End Tenancy.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*?
3. If the tenant's application is dismissed or the landlord's Notices to End Tenancy are 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. Only relevant evidence presented by the parties in their oral submissions were considered in this decision, in accordance with Rules 3.6 and 7.4 of the Residential Tenancy Rules of Procedure.

Both parties agreed to the following facts. This tenancy began on July 1, 2016 and is currently ongoing. Monthly rent in the amount of \$200.00 is payable on the first day of each month. A security deposit was not paid by the tenant to the landlord. The tenant testified that there were some exceptions to rent being due on the first day of each month. I asked the tenant to explain the exceptions, the tenant testified that he would explain the exceptions later in his testimony but failed to do so.

The landlord testified that on February 19, 2020 she served the tenant with a One Month Notice to End Tenancy for Cause with an effective date of April 1, 2020 (the "One Month Notice") via registered mail. The tenant confirmed receipt of the One Month Notice via registered mail but could not recall on what date.

The One Month Notice states the following reason for ending the tenancy:

- Rental unit/site must be vacated to comply with a government order.

The landlord entered into evidence a letter from the City which states in part:

It has come to our attention that there is a recreational vehicle being occupied on the subject property. The property is designated Agriculture Three Zone (AG3) within the Electoral Area H Zoning Bylaw No. 2498 and does not list this as a permitted use within Section 11.3....

We request that you review the information and bring the property into compliance by:

1. Ceasing occupancy of the recreational vehicle and either placing it in storage or removing it; or
2. Submitting an application to permit this use if you intend for the occupancy of this recreational vehicle to continue.

The tenant testified that he was very irritated by the landlord when she gave him the letter from the City and thought that the landlord “taddled” on herself.

The tenant filed his application to cancel the One Month Notice on March 12, 2020.

The landlord testified that on March 1, 2020 she served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of April 1, 2020 (the “10 Day Notice”) via registered mail. The tenant confirmed receipt of the 10 Day Notice via registered mail but could not recall on what date. The 10 Day Notice states that the tenant failed to pay \$200.00 that was due on February 29, 2020 and \$65.00 in utilities following written demand on February 24, 2020. The landlord testified that the tenant has not paid any rent for March or April 2020.

The tenant testified that he did not pay the landlord March or April 2020’s rent because of the landlord’s conduct. The tenant alleged the landlord stole from him and restricted services previously provided. The landlord denied the tenant’s allegations.

The tenant filed his application to cancel the 10 Day Notice on March 12, 2020.

Analysis

Based on the testimony of both parties, I find the landlord served the tenant with the One Month Notice on February 19, 2020 via registered mail. Pursuant to section 90 of the *Act*, I find that service of the One Month Notice was effected on the tenant on February 24, 2020, five days after its registered mailing, in accordance with section 88

of the *Act*. I find that the One Month Notice complies with the form and content requirements of section 52 of the *Act*.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, 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 by that date.

In this case, the tenant filed his application to cancel the One Month Notice on March 12, 2020, more than 10 days after being deemed to have received it. I find that, pursuant to section 47 of the *Act*, the tenant's failure to file to dispute the One Month Notice within 10 days of receiving the One Month Notice led to the end of this tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by April 1, 2020. As this has not occurred, I find that the landlord is entitled, pursuant to section 55 of the *Act*, to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 47(1)(k) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority.

Based on the undisputed testimony of the landlord and the letter from the City, I find that the rental unit must be vacated to comply with a government order. I find that in addition to my reasons above, the landlord is also entitled to a two-day Order of Possession pursuant to sections 47(1)(k) and 55 of the *Act*.

As I have already determined that the landlord is entitled to an Order of Possession pursuant to sections 47(4) and (5) and section 47(1)(k) of the *Act*, I decline to consider if the landlord is entitled to an Order of Possession based on the 10 Day Notice.

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: April 25, 2020

Residential Tenancy Branch