



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated March 20, 2020 ("One Month Notice"), and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice").

The Tenant, the Landlord, and an agent of the Landlord, R.S. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. 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.

The Tenant said that he sent the Application and Notice of Hearing documents to the Landlord via registered mail on March 3, 2020. The Landlord acknowledged receipt of the Tenant's registered mail package. The Landlord said that he submitted his responding documentary evidence to the RTB; however, he said he did not serve it on the Tenant, because it contains personal and confidential information that the Landlord wanted me to see, but not the Tenant. I advised the Parties that according to Rule 3.15, a Respondent must serve to the Applicant the evidence on which he intends to rely in the hearing. Rule 3.15 states:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than

seven days before the hearing.

In order for a hearing to be administratively fair, an applicant must receive and review the respondent's evidence in order to have an opportunity to respond. As a result, I will not be considering the Landlord's documentary evidence submitted to the RTB, but not served on the Tenant.

Early in the hearing, the Tenant clarified that he was solely claiming to cancel the One Month Notice, and that the 10 Day Notice related to a previous hearing. Accordingly, , we did not address issues surrounding a 10 Day Notice. I, therefore, dismiss this claim.

Preliminary and Procedural Matters

The Landlord provided his email address at the outset of the hearing and the Tenant said to mail the Decision to him at the rental unit address. The Parties confirmed their understanding that the Decision would be delivered to both Parties, and any Orders would be sent to the appropriate Party in this manner.

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 One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began approximately seven or eight years ago, and that the Tenant pays the Landlord a monthly rent of \$2,000.00, due on the first day of each month. The Parties agreed that the Tenant has not paid the Landlord a security or pet damage deposit.

No one submitted a copy of the One Month Notice, but the Tenant was able to provide the details, to which the Landlord agreed. The Tenant indicated that the One Month

Notice was signed and dated March 20, 2020, that it has the rental unit address, that it was served by being posted on the door on March 20, 2020, that the Landlord checked the ground for the eviction as being: "the tenant is repeatedly late paying rent." The Tenant said that the One Month Notice had an effective vacancy date of April 20, 2020.

A landlord who serves a One Month Notice must do so in compliance with section 47 of the Act. Section 47 (2) states that a notice must end the tenancy effective on a date that is (a) not earlier than one month after the date the notice is received, and (b) the day before the day in the month that rent is payable under the tenancy agreement. As noted above, the Agent served the Tenant with the One Month Notice on March 20, 2020, with a vacancy effective date of April 20, 2020. The Parties agreed that the rent was due on the first day of each month. Therefore, according to section 47 (2) (b), the effective vacancy date should have been April 30, 2020, not April 20, 2020. However, pursuant to section 53 of the Act, an incorrect effective date is automatically changed to the earliest date that complies with the Act. As such, this was not a fatal error on the One Month Notice.

The Landlord said that the Tenant has been late paying rent repeatedly for over a year. Further, the Landlord said that the Tenant has not paid any rent at all since he did in September 2019.

The Tenant said that he is up-to-date with rent payments to the Landlord. He also said that the Landlord required him to pay the rent in cash most of the time, and that the Landlord did not give the Tenant any receipts for these payments. The Tenant said that he paid the Landlord for three months rent ahead of time.

The Landlord said that the Tenant paid him rent by cheque in 2019 on January 14, February 11, April 8, and in June and July, which contradicts the Tenant's statement that he always had to pay in cash. The Tenant denied having said he "always" paid in cash, but he said that "the majority of the payments have been in cash, not the other way around. He wanted cash, so I paid by cash."

The Landlord mentioned a previous hearing that the Parties had attended on another matter on February 25, 2020. The Landlord said about this hearing that: "we had mentioned that we will no longer be willing to take cash. He knows that too."

Analysis

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

Section 26 of the Act states: “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, unless the tenant has a right under this Act to deduct all or a portion of the rent.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly amount due to the Landlord.

While there is no application before me for unpaid rent, I find I prefer the Landlord’s evidence over that of the Tenant on a balance of probabilities. I find that the Tenant’s insistence that the Landlord required him to pay the rent in cash most of the time is inconsistent with the Landlord’s undisputed testimony of the five months in 2019 in which the Tenant paid by cheque. I find that if the Landlord would not provide a receipt for cash payments, as the Tenant maintains, that the Tenant could have paid by cheque for his own protection and for proof that he had paid the rent in full and on time.

I find that I prefer the veracity of the Landlord’s evidence over that of the Tenant. I find that the Tenant was late paying rent when he did pay, and that the Landlord was right to have served a One Month Notice to end the tenancy. I find that the One Month Notice is consistent with section 52 of the Act as to form and content. I find that the One Month Notice is valid, and I confirm it. I therefore dismiss the Tenant’s Application wholly without leave to reapply. I find that the Tenant has not paid his rent on time or fully, and therefore, I award the Landlord an Order of Possession pursuant to section 55 of the Act, effective **two days after service of this Order** on the Tenant.

I have found that the Tenant owes outstanding rent; however, I have not determined the total amount of rent owed. The Landlord has leave to apply for a monetary claim for any outstanding rent due.

Conclusion

The Tenant is unsuccessful in his Application. I found that the Landlord provided sufficiently compelling testimony to support the validity of the One Month Notice, contrary to the Tenant’s evidence.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord

effective **two days after service of this Order** on the Tenant. The Landlord is 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, this Order 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 28, 2020

Residential Tenancy Branch