



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VICTORIA COOL AID SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 30, 2020 (the "Application"). The Tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 24, 2020 (the "Notice").

The Tenant filed an amendment stating "M.T. – health + weather".

The Tenant did not appear at the hearing. The Representative for the Landlord did appear. The Representative confirmed the Tenant is still living at the rental unit. The Representative confirmed the Landlord is seeking an Order of Possession for the rental unit based on the Notice.

I waited eight minutes at the outset of the hearing to allow the Tenant to participate in this hearing scheduled for 11:00 a.m. The Tenant did not call into the hearing. I proceeded with the hearing in the absence of the Tenant. The hearing proceeded for 21 minutes in total.

I explained the hearing process to the Representative who did not have questions when asked. The Representative provided affirmed testimony.

Both parties submitted evidence prior to the hearing. The Representative confirmed receipt of the hearing package and amendment. The Tenant only submitted the Notice and therefore I did not go into service of this evidence further.

The Representative testified that the Landlord's evidence was served on the Tenant March 06, 2020 by posting it to the rental unit door. I am satisfied the evidence was served on the Tenant in accordance with section 88(g) of the *Residential Tenancy Act*

(the “*Act*”). The Tenant is deemed to have received it March 09, 2020 pursuant to section 90(c) of the *Act*. I find the Landlord complied with rule 3.15 of the Rules of Procedure (the “Rules”) in relation to the timing of service of the evidence.

The Representative was given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Should the Landlord be issued an Order of Possession based on the Notice pursuant to section 55 of the *Act*?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started September 04, 2018 and is a month-to-month tenancy. Rent is \$375.00 per month due on or before the first day of each month. The agreement is signed by the Tenant and for the Landlord.

The Notice states the Tenant failed to pay \$375.00 in rent due January 01, 2020. It is addressed to the Tenant and relates to the rental unit. It is signed and dated by the Representative. It has an effective date of February 02, 2020.

The Representative testified that she posted both pages of the Notice to the rental unit door January 24, 2020.

The Representative confirmed the Tenant failed to pay rent in December. When the Tenant paid rent next, the payment was applied to outstanding rent for December and January rent was outstanding. The Representative confirmed \$375.00 in rent remains outstanding.

The Representative explained that the Tenant’s rent is taken by the Landlord through an electronic funds transfer. The Landlord cancelled the transfer for December because the Landlord had an Order of Possession. However, the tenancy continued. The electronic funds transfer was not reinstated in time for December. The Tenant was required to pay the amount not taken out for December and failed to do so. The Tenant did not have authority under the *Act* to withhold rent.

The Landlord submitted a rent ledger. The Representative confirmed the accuracy of the rent ledger which shows the following:

- No rent payment for December - \$375.00 owing
- January 01, 2020 - \$750.00 owing for December and January rent
- January 02, 2020 - \$375.00 paid, \$375.00 owing
- February 01, 2020 - \$750.00 owing for February rent and outstanding rent of \$375.00
- February 03, 2020 - \$375.00 paid, \$375.00 owing

The Representative sought an Order of Possession effective at the end of April.

Analysis

Rule 7.3 of the Rules states that an arbitrator can dismiss an application for dispute resolution without leave to re-apply if a party fails to attend the hearing.

Here, the Tenant failed to attend the hearing and provide evidence regarding his dispute of the Notice. In the absence of evidence from the Tenant regarding the basis for the dispute of the Notice, the Application is dismissed without leave to re-apply.

Based on the undisputed testimony of the Representative and written tenancy agreement, I am satisfied the Tenant is required to pay \$375.00 in rent by the first day of each month.

Based on the undisputed testimony of the Representative and rent ledger, I am satisfied the Tenant failed to pay December rent. I am satisfied that \$375.00 in rent was outstanding when the Notice was issued. Based on the undisputed testimony of the Representative, I am satisfied the Tenant did not have authority under the *Act* to withhold rent.

Based on the undisputed testimony of the Representative, I am satisfied the Tenant was served with the Notice on January 24, 2020 in accordance with section 88(g) of the *Act*. I do not have evidence before me about when the Tenant received the Notice, so it is deemed received January 27, 2020 pursuant to section 90(c) of the *Act*.

The Tenant had five days from receipt of the Notice to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*.

Based on the undisputed testimony of the Representative and rent ledger, I am satisfied the Tenant did not pay the outstanding rent by February 01, 2020.

The Tenant disputed the Notice; however, the Tenant did not appear at the hearing and the dispute has been dismissed.

Section 55 of the *Act* requires an arbitrator to issue an Order of Possession if a tenant applies to dispute a notice to end tenancy, the application is dismissed, and the notice complies with section 52 of the *Act*.

Section 52 of the *Act* outlines the form and content required for a notice to end tenancy issued under the *Act*.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content.

I have dismissed the Application and found the Notice complies with section 52 of the *Act*. Therefore, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective at 1:00 p.m. on April 30, 2020.

Conclusion

The Application is dismissed without leave to re-apply.

The Landlord is issued an Order of Possession pursuant to section 55(1) of the *Act*. The Order is effective at 1:00 p.m. on April 30, 2020. The Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court **SUBJECT TO THE MINISTERIAL ORDER NO. M089 DATED MARCH 30, 2020 AND AVAILABLE HERE:**

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/covid-19>

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 03, 2020

Residential Tenancy Branch