



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC

Introduction

The tenant filed an Application for Dispute Resolution on March 19, 2020 seeking: 1) an order that the landlord cancel the 10-Day Notice to End Tenancy (the “10 Day Notice”); and 2) an order that the landlord cancel the One Month Notice to End Tenancy for Cause (the “One Month Notice”). The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on May 15, 2020.

The landlord and their representative attended the hearing. In the conference call hearing I explained the process and offered the landlord the opportunity to ask questions. I provided the landlord and their representative the opportunity to present oral testimony and make submissions during the hearing. I also verified the correct spelling of the landlord’s name and so amend that specific detail on the tenant’s application.

The landlord confirmed receipt of the notice of this hearing from the tenant. This was mailed to the landlord and that package included the tenant’s evidence for this hearing. The landlord confirmed this hearing date with the tenant when they spoke in person prior to the hearing date.

Preliminary Matter

The tenant did not attend the hearing at the scheduled hearing time. I confirmed that the correct call-in numbers and participant code was provided in the Notice of Hearing. I also confirmed throughout the duration of the call that the tenant was not in attendance.

The tenant connected to the conference call hearing immediately after I concluded the hearing with the landlord still present on the call. The tenant stated they were late because they misplaced the hearing information sheet. I consider Rule 7.3 of the Rules of Procedure which provides that if a party fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to re-apply.

The tenant provided their prepared evidence to the landlord and submitted to this office when they made their application. I consider Rule 7.4 of the Rules of Procedure which states:

Evidence must be presented by the party who submitted it, or the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

I find the tenant did not attend the hearing at the scheduled time that was provided to them when they applied to cancel the notices issued by the landlord. Applying the Rules of Procedure, I proceeded with the hearing in the tenant's absence, and I am not considering their evidence package in my analysis of the issues below.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the Notice pursuant to section 46 of the *Act*?

Is the tenant entitled to an order that the landlord cancel or withdraw the Notice pursuant to section 47 of the *Act*?

If the tenant is successful in seeking to cancel the Notice, is the landlord entitled to an order of possession pursuant to section 55 of the *Act*?

Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord presented the terms of the tenancy agreement. An initial agreement was signed by the parties on March 20, 2018, for the start of tenancy on April 1, 2018. They did not provide a copy of this agreement.

The landlord provided a copy of the current tenancy agreement between the parties signed on February 23, 2019 for the tenancy starting that same day. The monthly rent was \$1,537.50 per month, payable on the first of each month. The security deposit paid was \$750.00 and the pet deposit paid was \$200.00.

The landlord presented that within a two-year period, they issued six '10 Day Notice to End Tenancy for Unpaid Rent' documents to the tenant. They provided the evidence of a copy of each notice and a registered mail receipt showing delivery. They issued these for unpaid rent on the dates as follows:

1. issued June 6, 2018 for unpaid rent \$1,500.00 due on June 1
2. issued August 9, 2018 for unpaid rent amount \$100.00 due on Aug 1
3. issued August 24, 2018 for unpaid rent amount \$600.00 due on August 1
4. issued February 14, 2019 for unpaid rent amount \$750 due on February 1
5. issued March 4, 2019 for unpaid rent amount \$1,500 due on March 1
6. issued March 9, 2020 for unpaid rent amount \$708.00 due on March 1

The landlord provided evidence which included a previous One Month Notice issued March 2, 2019. This was personally delivered to the tenant, with a Proof of Service statement of a witness who observed that transaction. The move-out date indicated on the Notice was April 3, 2019. Following this, on April 2, 2019, the landlord gave a note to the tenant which states: "I cancel the one month notice for move out today (April.2.2019)."

The landlord stated that each of these notices issued never resulted in an end of tenancy. After each notice issuance, the tenant then paid the rent in full. This caused frustration for the landlord where this matter impacted their personal finances.

The One Month Notice that is at issue in this hearing was issued on March 9, 2020. The reason given by the landlord for issuing this was "Tenant is repeatedly late paying rent."

The landlord provided a Canada Post registered mail receipt and tracking number. The tenant applied for this dispute on March 19, 2020. The registered mail tracking number verification shows a signature provided for this on March 18, 2020. This is the same registered mail receipt and tracking information for each notice served.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if among other reasons the tenant is repeatedly late paying rent. To be effective the document issued by a landlord must conform with section 52 of the *Act*.

The *Act* section 52 requires that a notice must contain: the signature of the landlord; the date; the address of the rental unit; the effective date; the grounds for ending the tenancy. A notice must also be in the approved form.

In the hearing the landlord stated that they One Month Notice they issued was a complete 3-page document. Although they did not provide the third page of this document when giving it as evidence, they stated in the hearing that they served a complete three-page document to the tenant. At the same time, they stated that they did not provide 'details of cause' in the document space for that purpose on page 3. For this reason, I find it more likely than not the document does not comply with the requirements of form and content, where an important part of the document to give detail is omitted.

As a result, I order that the One Month Notice is cancelled.

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

Section 46(4) of the *Act* states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

I am satisfied, based on the undisputed testimony, that when the landlord issued the 10 Day Notice the tenant owed \$708.00 for the month of March 2020. I am satisfied the landlord issued the 10 Day Notice on March 9, 2020, and the tenants received it on March 18, 2020. There is no evidence contrary to that of the landlord presented in the hearing. This finding is also supported by the tenant applying for this hearing on the following day, March 19, 2020.

The tenant's application to cancel the 10 Day Notice is dismissed. I find the evidence is clear that there was unpaid rent overdue. The tenancy is ending. The tenant did not

attend to present evidence; therefore, there is no evidence contrary to that presented by the landlord in this hearing.

Under section 55 of the *Act*, when the tenant's application to cancel a notice is dismissed, and I am satisfied the 10 Day Notice complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

I find that the 10 Day Notice complies with the requirements of form and content. The landlord is entitled to an order of possession on the effective date.

Conclusion

As the applicant did not attend to present their Application, I dismiss the tenant's application for a cancellation of the 10 Day Notice, without leave to reapply.

I grant an Order of Possession to the landlord 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 *Act*.

Dated: May 29, 2020

Residential Tenancy Branch