



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR FFT

Introduction

The tenant applied under the *Residential Tenancy Act* (the Act) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2020 (10 Day Notice) and to recover the cost of the filing fee.

The tenant attended the teleconference hearing. The hearing process was explained, evidence was reviewed, and the tenant was provided with an opportunity to ask questions about the hearing process. The tenant was provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure, and testimony provided.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated September 17, 2020 (Notice of Hearing), the application and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the landlord by registered mail on September 18, 2020. The tenant provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the landlord and the address for the landlord provided by the landlord on the 10 Day Notice. Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the Act. The registered mail tracking number has been included on the Style of Cause for ease of reference.

According to the Canada Post registered mail tracking website, the tenant's package was delivered on September 24, 2020. Based on the above, I find the landlord was

sufficiently served in accordance with the Act as of September 24, 2020; which was the date that was listed on the Canada Post tracking website.

Preliminary and Procedural Matter

The tenant confirmed that they did not have an email address and that they did not know the email address for the landlord. As a result, the decision will be sent by regular mail to both parties.

Issues to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- If yes, is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The tenant confirmed there was a written tenancy agreement and that they did not submit a copy into evidence for my consideration. The tenant affirmed that a month to month tenancy began in May 2019 and that monthly rent was \$3000.00 per month and due on the first day of each month.

The tenant confirmed receiving the 10 Day Notice and filed to dispute the 10 Day Notice on September 4, 2020, which is 2 days after the 10 Day Notice was dated. The tenant testified that they have not paid September or October 2020 rent as they have “just got back to work” and was caring for a loved one during a difficult time.

The landlord did not attend the hearing. The tenant confirmed that a repayment plan was served by the landlord dated August 26, 2020 and that as of October 1, 2020 monthly installments of \$1,500.00 are due, which has not been paid. The effective vacancy date listed on the 10 Day Notice was September 15, 2020, which has passed. The tenant confirmed that they continue to occupy the rental unit.

Analysis

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

10 Day Notice to End Tenancy for Unpaid Rent – The effective vacancy date on the 10 Day Notice is listed as September 15, 2020, which has passed. The tenant continues to occupy the rental unit. I find the tenant disputed the 10 Day Notice within the 5-day timeline provided for under section 46 of the Act. While the landlord did not attend the hearing, the onus of proof when disputing a 10 Day Notice falls on the tenant, and the tenant testified that they have not paid rent of \$3,000.00 for September or October of 2020, and have not paid the \$1,500.00 repayment amount owing for October 1, 2020.

Section 26 of the Act requires that the tenant pay rent on the day that it is due in accordance with the tenancy agreement whether or not the landlord complies with the Act. Furthermore, September and October 2020 are not covered in the repayment plan timelines of March 18, 2020 to August 17, 2020 under RTB Policy Guideline 52.

Therefore, based on the above, I find the 10 Day Notice issued by the landlord to be **valid and is upheld** as the tenant failed to pay rent when it was due. I dismiss the tenant's application in full as a result. Section 55 of the Act applies and states:

Order of possession for the landlord

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[Emphasis added]

Pursuant to section 55 of the Act and considering that I find the 10 Day Notice complies with section 52 of the Act, **I must** grant the landlord an order of possession. Therefore, **I grant** the landlord an order of possession **effective 2 days** after service on the tenant.

I find the tenancy ended on September 15, 2020, which was the effective vacancy date listed on the 10 Day Notice.

I do not grant the filing fee as the tenant's application has failed.

Conclusion

I dismiss the tenant's application to cancel the 10 Day Notice due to insufficient evidence, without leave to reapply.

The tenancy ended on September 15, 2020. The landlord is granted an order of possession effective 2 days after service on the tenant. It will be up to the landlord to serve and enforce the order of possession. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court. The tenant may be held liable for the costs associated with enforcing the order of possession.

The decision will be mailed to both parties. The order of possession will be mailed to the landlord only for service on the tenant.

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: October 22, 2020

Residential Tenancy Branch