



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1035412 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

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

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 7, 2020 ("10 Day Notice"), pursuant to section 46.

The tenant did not attend this hearing, which lasted approximately 20 minutes. The landlord's two agents attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The male landlord ("landlord") confirmed that he was the building manager of the landlord company named in this application and the "female landlord" was assisting him. Both landlord agents confirmed that they had permission to represent the landlord company at this hearing.

The landlord confirmed that he was notified about this hearing by way of a text message sent by the tenant. The landlord confirmed that he wanted to proceed with this hearing, despite not receiving a complete paper copy of the tenant's application for dispute resolution hearing package.

The landlord testified that he personally served the tenant with the landlord's 10 Day Notice on September 7, 2020. The notice indicates an effective move-out date of September 18, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was personally served with the landlord's 10 Day Notice on September 7, 2020. The tenant indicated that he received the notice on September 7, 2020, by way of posting to his door, in his application when he applied to cancel the notice.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submissions from the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

Issue to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

While I have turned my mind to the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on June 15, 2020. Monthly rent in the current amount of \$1,400.00 is payable on the first day of each month. A security deposit of \$700.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice for unpaid rent of \$1,400.00 due on September 1, 2020. The landlord testified that the tenant failed to pay the above rent amount as well as additional rent of \$1,400.00 for each of October and November 2020. The landlord seeks an order of possession based on the 10 Day Notice.

Analysis

According to subsection 46(4) of the *Act*, a tenant may dispute a 10 Day Notice by making an application for dispute resolution within five days after the date the tenant received the notice. The tenant received the 10 Day Notice on September 7, 2020 and filed his application to dispute it on September 10, 2020. Therefore, he was within the five-day time limit to dispute the 10 Day Notice. However, the tenant did not appear at this hearing to present his application.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which in this case required the tenant to pay by the first day of each month.

On a balance of probabilities and for the reasons stated below, I accept the landlord's undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due of \$1,400.00 due on September 1, 2020, within five days of receiving the 10 Day Notice.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days or to appear at this hearing to pursue his application, led to the end of this tenancy on September 18, 2020, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by September 18, 2020.

Section 55(1) of the *Act* reads as follows:

- 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.*

As noted above, I dismissed the tenant's application. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. Accordingly, I find that the landlord is entitled to an Order of Possession effective two (2) days after service on the tenant.

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant's entire application is dismissed without leave to reapply.

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: November 02, 2020

Residential Tenancy Branch