



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, RP**

Introduction

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

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to sections 46 and 55; and
- An order for regular repairs pursuant to sections 32 and 62.

The tenant attended the hearing and the landlord attended the hearing, accompanied by her counsel, RP, property manager, SH, and an interpreter. As both parties were present, service of documents was confirmed. The landlord acknowledged receipt of the tenant's Application for Dispute Resolution package and the tenant acknowledged service of the landlord's evidence. Neither party indicated they had any issues with timely service of documents, and both were prepared to have the merits of the tenant's application heard.

Issue(s) to be Decided

Should the landlord's notice to end tenancy be upheld or cancelled?

Should the landlord be required to perform repairs to the rental unit?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence by the landlord. The fixed 20 month tenancy between the named landlord and tenant began on November 1, 2017 with rent set at \$5,350.00 per month with utilities not included. On June 13, 2019, the

tenancy agreement was extended as a month to month tenancy agreement at the same rent, but also included an additional \$150.00 per month city utility pre-payment.

Landlord's counsel gave the following submissions. The notice to end tenancy was served by registered mail to the tenant on August 17th and delivery was confirmed on August 18th. The tracking number for the mailing is recorded on the cover page of this decision. The address for delivery was the subject rental unit address listed on the tenancy agreement. Landlord's counsel advises that they have no other address for service of the tenant on file and no other address appears on the tenancy agreement.

Landlord's counsel submits that another copy of the notice to end tenancy was sent to the tenant by email on September 11, 2020 and the tenant provided a copy of that email as evidence.

A copy of the notice to end tenancy was provided as evidence by the landlord. The notice, dated August 12, 2020, states the tenant has failed to pay utilities in the amount of \$35,299.24 following written demand on July 8, 2020. A copy of the written demand was also provided as evidence by the landlord.

The landlord's property manager testified the tenant has paid rent up until the end of November 2020 and that he has provided the tenant with acknowledgement that the rent money received was for 'use and occupancy' only. There was no intention to reinstate the tenancy by accepting rent.

The tenant does not acknowledge receiving the notice sent to him by registered mail on August 17th. Currently, he does not know where the original 10-day notice went or where it is today. The tenant testified that he acknowledges receiving the 10-day notice to end tenancy by email on September 11th, but when he received it, the tenant needed time to *'get things together'* and file for dispute resolution. It was the first time he's had to do this, and he was unsure about how to file for dispute. The tenant testified that he does not reside in the rental unit. The rental unit is occupied by the eldest 3 children of a consultant who works for him. The consultant does not live in the rental unit either; he resides elsewhere with his youngest 3 children. The tenant submits that the original notice sent to him by registered mail was improperly served because the landlord *"knew"* the tenant himself did not reside at the rental unit. When asked to provide evidence of him providing any alternate addresses for service to the landlord, the tenant was unable to do so.

Landlord's counsel submits that even if service of the original notice to end tenancy sent to the tenant by registered mail on August 17th was to be found faulty, the tenant's acknowledgement of service by email on September 11th and filing of the application to dispute it on September 18th is contrary to the Act.

Analysis

Service of all documents, with the exception of applications for dispute resolution or a decision of a director to proceed with a review, is governed by section 88 of the Act. This includes service of a notice to end tenancy. Section 88 is reproduced below:

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- a) by leaving a copy with the person;
- b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- j) by any other means of service prescribed in the regulations.

In this case, the tenant argues that he did not reside at the rental unit and that he lives elsewhere. Despite this, when asked to direct my attention to any evidence to satisfy me he made the landlord aware he lived elsewhere, the tenant was unable to do so.

Turning to the tenancy agreement, there is no indication that the tenant was not going to live in the rental unit. Although there are 8 occupants listed on page 9 of the tenancy agreement, there is no apparent reason to believe the tenant intended on living elsewhere with a different address for service. Without satisfactory evidence to the contrary, I find the tenant is deemed to reside at the address stated in the tenancy agreement, the rental unit.

Given these factors, I find the landlord served the tenant in accordance with section 88(c) by sending a copy by registered mail to the address at which the person resides. In accordance with section 90 of the Act, the notice to end tenancy is deemed served on the 5th day after it was mailed by registered mail: five days after August 17th, on August 22, 2020.

I also find that the tenant acknowledges being served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 11th, by email. While I have already made the finding the notice was deemed served on August 22nd, pursuant to section 71 of the Act, I find the notice was served a second time on September 11th, 2020.

Section 46(4) and (5) states:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

The tenant filed to dispute the notice to end tenancy on September 18, 2020 – more than five days after the original notice was deemed received by him and more than five days after he acknowledges receiving it by email. Since the tenant failed to file his application within 5 days of being served with the notice to end tenancy, he is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

The effective date was not provided on the notice, and in accordance with section 68(1), I amend the landlord's notice to provide an effective date of September 1, 2020, ten days after service upon the tenant by registered mail on August 22nd. I am satisfied the tenant knew or should have known the effective date was omitted from the notice and in

the circumstances I find it reasonable to amend it. As the tenant is conclusively presumed to have accepted the tenancy ended, the merits of his application to dispute the notice will not be examined or analyzed. I dismiss the tenant's application to dispute the notice without leave to reapply.

Section 55 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.

I have examined the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and find it complies with form and content requirements as set out in section 52, with the exception of the effective date which I amended pursuant to section 68.

Since the effective date of September 1, 2020 has passed, and due to the fact that the tenant has paid rent until the end of November, I grant the landlord an order of possession effective at 1:00 p.m. on November 30, 2020.

The tenant's application for regular repairs to the rental unit is dismissed without leave to reapply as this tenancy is ending.

Conclusion

I grant an Order of Possession to the landlord effective at 1:00 p.m. on November 30, 2020. 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.

This decision is legal, final and binding and 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 16, 2020

Residential Tenancy Branch