



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 22, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order to cancel a 10 Day Notice for unpaid rent or utilities (the "10 Day Notice") dated September 11, 2020; and
- an order granting more time to dispute a Notice to End Tenancy.

The Tenant and the Landlord attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed receipt of their respective Application and documentary evidence packages. No issues were raised in relation to the service of these documents. As such, I find that the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice, pursuant to Section 46 of the *Act*?
2. Is the Tenant entitled to an order granting more time to cancel the 10 Day Notice, pursuant to Section 66 of the *Act*?
3. If the Tenant is not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified that the tenancy began on September 15, 2017. Currently, rent in the amount of \$2,000.00 is due to be paid to the Landlord by the first day of each month. The parties agreed that the Tenant paid a security deposit in the amount of \$1,000.00 which the Landlord continues to hold. The parties agreed that the Tenant and his adult son continue to occupy the rental unit.

The Landlord stated that he served the Tenants the 10 Day Notice dated September 11, 2020 with an effective vacancy date of September 21, 2020 by registered mail on September 11, 2020. The 10 Day Notice indicates that the Tenants have failed to pay rent in the amount of \$18,550.00 of which was due on September 1, 2020. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that the Tenants had five days to dispute the Notice. The Tenant confirmed having received the notice on September 13, 2020 and disputed the 10 Day Notice on September 22, 2020.

The Landlord referred to a detailed rental ledger dating back to January 2018. The Landlord stated that as of September 30, 2020 the Tenants owed rent to the Landlord in the amount of \$18,500.00. The Landlord stated that the Tenants also paid no rent for October or November 2020. As such, the Landlord stated that the Tenants currently owe \$22,500.00 in unpaid rent. The Landlord provided a copy of the rental ledger in support.

In response, the Tenant stated that he has been suffering from health issues which prevented him from submitting his Application to cancel the 10 Day Notice on time. The Tenant acknowledged that he and his son owe a significant amount of rent to the Landlord, which has yet to be paid. The Tenant agreed that he has not paid any rent to the Landlord since receiving the 10 Day Notice.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenants must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

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

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

In relation to the 10 Day Notice dated September 11, 2020, the Landlord testified that he served the 10 Day Notice to the Tenant on September 11, 2020 by registered mail. The Tenant acknowledged receipt of the 10 Day Notice on September 13, 2020. Therefore, pursuant to section 88 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

Accordingly, pursuant to section 46(4) of the Act, the Tenants had until September 18, 2020 to either pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution. The parties testified and agreed that the Tenants have not paid any rent to the Landlord since receiving the 10 Day Notice and submitted the Application to cancel the 10 Day Notice on September 22, 2020 which is outside the time permitted to submit an application for dispute resolution.

The Tenant has applied for more time to cancel the 10 Day Notice. While the Tenant outlined some health issues, he was experiencing I find that there is insufficient evidence before me to support an exceptional circumstance preventing the Tenant or his son from making an Application within the time limits set out in Section 46(4) of the Act. For this reason, I dismiss the Tenant's Application for more time.

I find the Tenant was out of time to dispute the 10 Day Notice and is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day

Notice, September 21, 2020. In light of the above, I dismiss the Tenant's Application to cancel the 10 Day Notice, without leave to reapply.

When a Tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a Landlord. Having reviewed the 10 Day Notice I find it complies with section 52 of the *Act*.

I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant.

Conclusion

Pursuant to section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. If the tenant fails to comply with the order of possession it may be filed in 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 *Residential Tenancy Act*.

Dated: November 23, 2020

Residential Tenancy Branch