



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOSA BLUESKY PROPERTIES (Main)
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

The tenant filed an Application for Dispute Resolution on October 7, 2020 seeking an order that the landlord cancel or withdraw the 10-Day Notice to End Tenancy (the "Notice"). The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on December 17, 2020.

Neither the tenant nor the landlord attended the hearing, although I left the teleconference hearing connection open until 11:10 a.m. to enable the parties to call in to this teleconference hearing scheduled for 11:00 a.m.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed throughout the duration of the call that neither party was in attendance.

Rule 7.3 of the Rules of Procedure provides that if a party or their agent 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.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the Notice?

Conclusion

As the applicant tenant did not attend to present their Application, I dismiss their application for a cancellation of the Notice, with leave to reapply. While I have provided leave to re-apply, it does not extend any applicable time limits under the *Act* and I have made no legal findings on the merits of the dispute.

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: December 18, 2020

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Residential Tenancy Branch
Office of Housing and Construction Standards

Introduction

The tenant filed an Application for Dispute Resolution on October 7, 2020 seeking an order to cancel the '10 Day Notice to End Tenancy for Unpaid Rent or Utilities' (the "10 Day Notice"). The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "Act") on December 17, 2020.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

The tenant stated that they delivered notice of the dispute via registered mail. This included the documentary evidence the tenant is presenting in this hearing. The landlord confirmed they received the information of this dispute resolution via mail. There was also a discussion between the tenant and landlord in which the tenant advised they had applied for dispute resolution on the issue at hand. The landlord did not provide documentary evidence for this hearing.

Issue(s) to be Decided

Is the tenant entitled to an order to cancel the 10 Day Notice pursuant to section 46 of the *Act*?

If the tenant is unsuccessful in seeking to cancel the 10 Day Notice, is the landlord entitled to an order of possession pursuant to section 55(4) 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 tenant provided a copy of the residential tenancy agreement, and both parties confirmed the relevant details. Both parties signed the agreement on March 8, 2019, with the tenancy beginning on April 1, 2019. This was to be for a fixed term ending on March 31, 2020. The document provides that at the end of the fixed-term tenancy, the agreement would continue on a month-to-month basis.

The rent amount was \$1,595, payable on the 1st of each month. The tenant paid a security deposit of \$797.50.

The tenant provided a copy of the 10 Day Notice, issued on October 6, 2020. This gives the move-out date of October 19, 2020. On page 2 of the document, the landlord indicated that they attached the document to the door of the rental unit on October 6, 2020. This landlord indicated that they issued the document for unpaid rent in the amount of \$1,686, due on October 1, 2020.

Both parties verified the following timeline of events as true:

- The landlord served the initial 10 Day Notice on March 6, 2020. They gave this to the tenant in person, hand-delivered. The landlord advised the tenant verbally at that time that the tenant had 10 days to either pay or move.
- The tenant applied for dispute resolution regarding this notice on March 10, 2020. The tenant stated on the form that they were “waiting for a cheque from client”.
- The landlord served the same document on March 12, 2020. This gives the further details of the move out date being March 17, 2020. The landlord placed this document in the tenant’s mail slot and affixed a copy to the door of the rental unit. The landlord stated the “same Notice was altered/filled in . . . copied and filled in details.”
- The tenant called the landlord on the March 12, to say that they had applied for a dispute resolution.

The tenant listed other concerns with their rental arrangement: no washer dryer; the landlord knocking on the door to ask about payment of rent; and a \$50 fee for late rent payment.

The tenant remains in the rental unit. The tenant did not pay rent for the months of March and April. The landlord confirmed this detail. In early March, at the time of the service of the 10 Day Notice, the tenant stated to the landlord that he was waiting for a

cheque from a client. By March 12, the tenant still had not paid, and informed the landlord again that they had not received money from the client.

Analysis

In the hearing I informed the tenant that the issue of a fee charged for late payments was not at issue and is unrelated. It does not form the basis for any claim presented by the tenant. This was not the reason for service of the 10 Day Notice.

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 find the tenant was aware of all the relevant information. I am satisfied the tenant was at all times fully informed of the end of tenancy, the timelines thereof, and the reasons why the landlord issued the 10 Day Notice.

Moreover, the tenant was fully aware of their right to either pay the rent or apply for dispute resolution, as stated on the 10 Day Notice. The tenant did proceed with their Application for Dispute Resolution on October 7, 2020.

Section 26 of the *Act* requires a tenant to pay 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 the *Act* to deduct all or a portion of the rent.

I find the tenant did not have the right to withhold payment of rent. The tenant testified and gave evidence that they were waiting on money from a client. This is not sufficient evidence, as presented by the tenant, on why they feel they were not required to pay the rent.

For these reasons, I dismiss the tenant's application to cancel the 10 Day Notice. The tenancy is ending.

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

I find the 10-Day Notice, as described in the hearing, complies with the requirements for form and content with each detail. These are, as in section 52: the signature and date of the landlord; the address of the rental unit; the effective date of the notice (i.e., the move out date); and the grounds for ending the tenancy. The document itself is in the approved form as specified in the *Act*.

Given my finding 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

For the reasons outlined above, 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 tenants. 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: December 17, 2020

Residential Tenancy Branch