



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO HEIGHTS RESTAURANT CO.
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

Introduction

On December 19, 2020, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

D.H. attended the hearing as an agent for the Landlord. The Tenant did not make an appearance at any point during the 36-minute teleconference. All in attendance provided a solemn affirmation.

D.H. advised that the Tenant was served with the Notice of Hearing and evidence package by registered mail on January 20, 2021 (the registered mail tracking history is noted on the first page of this Decision). Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Notice of Hearing and evidence package five days after it was mailed.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

D.H. advised that the Landlord started a tenancy with another tenant at some point, who then rented a room in the rental unit to the Tenant. As this was contrary to the original tenancy agreement, the Landlord then served his original tenant with a One Month Notice to End Tenancy for Cause on September 5, 2020. He stated that this original tenant gave up vacant possession of the rental unit on September 30, 2020.

However, he submitted that the Landlord then engaged into a verbal, unwritten tenancy agreement with the Tenant on October 1, 2020. He advised that the Landlord did not get any information from the Tenant and did not know his last name. Rent was established at \$600.00 per month and was due on the first day of each month. A security deposit was not paid by the Tenant to the Landlord.

He advised that the Landlord served the Notice by posting it to the Tenant's door on December 4, 2020. The Notice indicated that \$600.00 was due on December 1, 2020 and that the effective end date of the tenancy was December 18, 2020.

D.H. was asked to refer to the Notice, and he was questioned why the original tenant was named on the Notice if that person's tenancy ended on September 30, 2020. As well, he was questioned why it was noted on the Notice that another person's last name was indicated as "Unknown". D.H. explained that the original tenant was named on the Notice because the Landlord did not know the full name of the person that he entered into a tenancy with on October 1, 2020. The second person listed on the Notice was the Tenant that he had entered into a verbal tenancy with; however, the Landlord only knew this person's first name and listed his last name as "Unknown".

He stated that the Landlord discovered the Tenant's last name at some point in January 2021 and the Notice of Hearing and evidence package was served to the Tenant, with his last name included on the registered mail customer receipt. It is his position that the Notice can simply be amended now that the Landlord knows the Tenant's last name.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 13 of the *Act* requires that the Landlord prepare all tenancy agreements in writing.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The issue that I must consider here though is the validity of the Notice. When reviewing the names of the tenants noted on the Notice, it is not clear to me why the Landlord would have named his previous tenant on the Notice as this person's tenancy ended months prior to service of the Notice. Therefore, this person could not be held responsible for future rent owed on a tenancy that does not pertain to him any longer. D.H. could not provide any explanation for why this was done or how it would not be considered a fatal flaw on the Notice.

Secondly, the other person's last name was documented on the Notice as "Unknown" at the time the Notice was served. While D.H. advised that this person was the Tenant that the Landlord started this new tenancy with and that the Landlord only claimed to know this person's first name at the time the Notice was served, it is D.H.'s position that the absence of a last name on the Notice should not matter as the Landlord now knows the Tenant's full legal name, and the Application can simply be amended. Furthermore, it is his position that should the Landlord be awarded an Order of Possession in what he believes is the Tenant's legal name, should this name still be incorrect, he can simply have that name amended at the Supreme Court to a name that he then believes to be the Tenant's correct name.

When reviewing the Notice, and in taking into consideration D.H.'s submissions, the position that he is advancing is that it does not matter what name(s) are indicated on the Notice, that a Decision can be rendered against a party regardless, and that the party's name can simply be corrected at a later date either when the Decision is rendered or amended at some point later if the party's name is still not accurate.

In my view, I find D.H.'s submissions to be weak and that they have no merit. What he is suggesting is that ostensibly, the Landlord can write any name on the Notice, serve it to his Tenant, and then have a Decision enforced on his Tenant once a correct name is discovered. I find this to be contrary to the principles of natural justice. Given that the Landlord has nonsensically named a previous tenant on the Notice who has no involvement in this tenancy, and that the Landlord has not properly named his Tenant on the Notice, I am satisfied that these are fatal flaws which would render the Notice invalid. As such, I find that the Notice of December 4, 2020 is cancelled and of no force and effect.

As the Landlord was not successful in this Application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, the Landlord's Application is dismissed without leave to reapply. I hereby Order that the 10 Day Notice to End Tenancy for Unpaid Rent of December 4, 2020 to be cancelled and of no force or effect.

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: February 12, 2021

Residential Tenancy Branch