



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1163075 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNRT, MNDCT, RP, RR, LRE, PSF, LAT, AS, FFT

Introduction

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

- cancellation of the landlords' Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 9, 2021 ("10 Day Notice"), pursuant to section 46;
- a monetary order of \$25,416.00 for the cost of emergency repairs and for compensation under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to make repairs to the rental unit, pursuant to section 33;
- an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order restricting the landlords' right to enter the rental unit, pursuant to section 70;
- an order requiring the landlords to provide services or facilities required by law, pursuant to section 65;
- authorization to change the locks to the rental unit, pursuant to section 70;
- an order allowing the tenant to assign or sublet the rental unit because the landlords' permission has been unreasonably withheld, pursuant to section 65;
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 16 minutes. The male landlord ("landlord") and the landlords' agent 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 landlord confirmed that he and the landlords' agent are shareholders of the landlord company which owns the rental unit and is named in this application. He confirmed that they both had permission to speak on the landlord company's behalf (collectively "landlords"). The landlords' agent did not testify at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution from the tenant. He said that the Residential Tenancy Branch ("RTB") provided the landlords the notice of hearing information to call into the hearing, since the tenant did not provide this document to the landlords. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's application.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to add the name of the landlord company as a landlord-respondent party. The landlord consented to this amendment during the hearing. The landlord confirmed that the landlord company owns the rental unit and is indicated as a landlord party in the parties' written tenancy agreement, which was provided for this hearing. I find no prejudice to the tenant in making this amendment.

The landlord stated that he personally served the tenant with the landlords' evidence package on February 15, 2021. I informed the landlords that I could not consider the landlords' evidence at the hearing or in my decision because it was received late by the tenant, less than 7 days prior to the hearing, not including the service or hearing date, contrary to Rule 3.15 of the *RTB Rules of Procedure*. I notified the landlords that I could only consider a copy of the 10 Day Notice, provided by the landlords, since the tenant applied to dispute it in this application and the tenant did not provide a copy of it.

The landlord testified that he personally served the tenant with the landlords' 10 Day Notice on January 9, 2021. He said that the landlords' agent witnessed the service. He confirmed that the notice indicates an effective move-out date of January 19, 2021. In accordance with section 88 of the *Act*, I find that the tenant was personally served with the landlords' 10 Day Notice on January 9, 2021. The tenant applied to dispute the notice in this application.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the *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 landlords are entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

Issues to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

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 October 1, 2020. Monthly rent in the amount of \$2,300.00 is payable on the first day of each month. No security or pet damage deposits were paid by the tenant to the landlords. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlords issued the 10 Day Notice for unpaid rent of \$2,300.00 due on January 1, 2021 and unpaid utilities of \$452.44 due on December 1, 2020. The landlord testified that the tenant failed to pay \$2,300.00 in rent for each of January and February 2021. The landlord stated that the tenant failed to pay City hydro utilities in November and December 2020 of \$452.44 after a written demand and the hydro bills were issued by email to the tenant from the landlords on December 1, 2020 and again on January 9, 2021, with the 10 Day Notice. The landlord confirmed that the above rent and utility amounts are still unpaid. The landlords seek 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 January 9, 2021 and filed his application to dispute it on January 25, 2021. Therefore, he was not within the five-day time limit to dispute the 10 Day Notice. Further, 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, 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 \$2,300.00 due on January 1, 2021, 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 January 19, 2021, 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 January 19, 2021.

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 landlords' 10 Day Notice complies with section 52 of the *Act*. Since the effective date on the notice has passed and the tenant has failed to pay rent for January and February 2021, I find that the landlords are 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(s) 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: February 22, 2021

Residential Tenancy Branch