



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **PSF, CNR**

Introduction

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

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65;

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was represented by their advocate. The landlord was represented by a family member who acted as agent.

Both parties disputed that they have been served with the respective materials. The tenant confirmed receipt of a 10 Day Notice dated January 24, 2021 but disputed that they were served with the landlord's evidence. The landlord disputed that they were served with the tenant's application and evidence.

Both parties provided no documentary evidence of service and no details of service, not even the date that their materials were purported to have been served. Despite testifying that they were not served with the tenant's application the landlord said they were aware of the existence and contents of the tenant's application. The parties both made numerous reference in their testimony to the contents of the other's evidence. While the parties dispute that they were served with the materials, I find that they were well aware of the contents of the evidentiary materials and that there is no prejudice to either party to allow the materials to be considered. I find that each party was sufficiently served with all materials in accordance with section 71 of the *Act*.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to any of the other relief sought?

Background and Evidence

The parties agree on the following facts. This periodic tenancy began in October 2018. The monthly rent is \$1,650.00 payable on the first of each month. A security deposit of \$825.00 was collected at the start of the tenancy and is held by the landlord.

The parties differ on the other aspects of the claim. The tenant submits that they made all rent payments in cash, that they prepared their own receipts and have paid rent in full to the date of the hearing and there is no basis for a 10 Day Notice to have been issued. The landlord says that rent payments were made by internet e-transfers, that the tenant failed to pay any rent since December 2020 and there is presently an arrear of \$4,950.00. The tenant submitted into evidence copies of payment receipts that they drafted. The landlord submitted into evidence copies of bank statements and e-transfer notices showing payments by the tenant to the landlord prior to December 2020.

Analysis

As the parties provided conflicting testimony, I must first make a determination on credibility. Taken in its entirety I find the landlord to be a more credible witness than the tenant. The landlord provided cogent testimony that was supported in the documentary evidence from third party organizations and consistent with the behaviour of a reasonable person under the circumstances. The tenant's testimony was solely supported by documentary evidence they drafted and had little air of reality.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based.

I accept the evidence of the parties that monthly rent for this tenancy is \$1,650.00 payable on the first of each month. I accept the evidence of the landlord that the tenant has failed to pay full rent since December 2020 and there was an arrear of \$3,300.00 as

at January 24, 2021 the date of the 10 Day Notice. I accept the evidence of the landlord that no rent was paid since the issuance of the notice.

I do not find the tenant's submission that they have paid the rent in full throughout the tenancy to be believable or sufficiently supported in evidence. I find the receipts drafted by the tenant and submitted into evidence to be of limited probative value. I find the bank statements submitted by the landlord to have greater weight as it is provided by a third party institution and shows historic payments prior to the missed rental payments.

I find that the rental amount has not been paid in full and that the tenant failed to pay the full rent due within the 5 days of service of the 10 Day Notice. Accordingly, I dismiss the tenant's application.

Section 55 of the *Act* provides that:

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 dismissed the tenant's application, and I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end. Therefore I find that the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

As the tenancy is ended I find it unnecessary to make a finding on the other portions of the tenant's claim pertaining to an ongoing tenancy.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. 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 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: March 1, 2021

Residential Tenancy Branch