



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Tenant: CNR, OLC
For the Landlord: OPR-DR, OPL

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant filed claims for:

- an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated February 2, 2021 ("10 Day Notice"); and
- an Order for the Landlord to Comply with the Act or tenancy agreement.

The Landlord filed claims for:

- an Order of Possession for unpaid rent, further to having served the 10 Day Notice; and
- an Order of Possession, further to having served a Two Month Notice to End Tenancy for Landlord's Use dated January 29, 2021 ("Two Month Notice").

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide her evidence orally and respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential

Tenancy Branch (“RTB”) Rules of Procedure (“Rules”). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that she served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on February 19, 2021. The Landlord provided a Canada Post tracking number as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

In addition, as an applicant, the Tenant was provided with a copy of the Notice of a Dispute Resolution Hearing on February 10, 2021; however, the Tenant did not attend the teleconference hearing scheduled for April 12, 2021 at 9:30 a.m. (Pacific Time).

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Landlord and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 9:30 a.m. on April 12, 2021, as scheduled.

Rule 7.3 states that 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 reapply. The teleconference line remained open for over 25 minutes; however, neither the Tenant nor an agent acting on his behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to section 62 of the Act and Rule 7.3, I **dismiss the Tenant’s Application without leave to reapply**.

Section 55 of the Act states that if a tenant’s application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52, I must grant the landlord an order of possession.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Should the Two Month Notice be cancelled or confirmed?

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The tenancy agreement states, and the Landlord confirmed in the hearing that the periodic tenancy began on November 1, 2020, with a monthly rent of \$400.00, due on the first day of each month. The Landlord confirmed that the Tenant paid the Landlord a security deposit of \$200.00, and no pet damage deposit.

The Tenant applied for an order to cancel the 10 Day Notice; however, as he did not attend the hearing, I dismissed his application without leave to reapply.

The Tenant did not apply to the RTB for dispute resolution to dispute the Two Month Notice, which was signed and dated January 29, 2021 and it has the rental unit address on it. The Landlord said she served the Tenant with the Two Month Notice in person on January 29, 2021, and that it had an effective vacancy date of April 1, 2021. The Two Month Notice was served on the ground that all the conditions for the sale of the rental unit have been satisfied, and the purchaser has asked the Landlord in writing to give this Notice, because the purchaser or a close family member intends in good faith to occupy the rental unit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Based on the evidence before me for consideration, I find that the Tenant was served with the Two Month Notice on January 29, 2021, when the Landlord gave it to the Tenant in person. I also find that the Two Month Notice was consistent with section 52 of the Act.

Section 49(9) of the Act addresses the situation when a tenant who has received a Two Month Notice. The Act says that if this tenant does not apply for dispute resolution within 15 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

As there is no evidence before me that the Tenant disputed the Two Month Notice, I find that he is conclusively presumed under section 49(9) of the Act to have accepted the

Two Month Notice, and I find that the tenancy, therefore, ended on April 1, 2021. As a result, I find that the Tenant is overholding the rental unit and the Landlord is therefore entitled to an Order of Possession pursuant to section 55(2)(b) of the Act. As the effective date has passed and the Agent testified that rent for January through April 2021 has not been paid, aside from \$100.00 in January 2021, the Order of Possession will, therefore, be effective two days after service on the Tenant. Pursuant to section 55 of the Act, I award the Landlord with an order of possession for the rental unit, effective **two days after service of this Order** on the Tenant.

Conclusion

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 12, 2021

Residential Tenancy Branch