



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR

Introduction

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

- more time to cancel a Notice to End Tenancy, pursuant to section 66; and
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the "application") seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:28 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's property manager attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the property manager and I were the only ones who had called into this teleconference.

The property manager was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The property manager testified that they are not recording this dispute resolution hearing.

Preliminary Issue- Landlord's Evidence

The landlord did not submit any evidence for this application for dispute resolution. The property manager testified that she filed an application for an Order of Possession for Unpaid Rent and thought that it would be crossed with this Application for Dispute resolution, but it was not submitted in time to do so. The property manager testified that the evidence was uploaded to the landlord's application. The file number for the landlord's application for dispute resolution is located on the cover page of this decision.

Residential Tenancy Branch Rule of Procedure 3.19 states:

No additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the arbitrator. In providing direction, the arbitrator will:

- a) specify the date by which the evidence must be submitted to the Residential Tenancy Branch directly or through a Service BC Office and whether it must be served on the other party; and
- b) provide an opportunity for the other party to respond to the additional evidence, if required.

In considering whether to admit documentary or digital evidence after the hearing starts, the arbitrator must give both parties an opportunity to be heard on the question of admitting such evidence.

I allowed the property manager 24 hours to upload a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") and the proof of service document for the Notice. I find that the acceptance of the above late evidence does not prejudice the tenant as the tenant confirmed in this application for dispute resolution that the Notice was delivered on January 13, 2021. The tenant also uploaded page 1 of 3 of the Notice into evidence. I find that the tenant already has a copy of the Notice. I find that the proof of service document does not prejudice the tenant as the tenant's application for dispute resolution confirms that the Notice was received. Had the tenant attended this hearing, which the tenant applied for, the tenant would have been provided with an opportunity to be heard on the question of admitting the above evidence.

The property manager entered into evidence all three pages of the Notice and a proof of service document for the Notice, within 24 hours of the end of this hearing.

Issues

1. Is the tenant entitled to more time to cancel a Notice to End Tenancy, pursuant to section 66 of the *Act*?
2. Is the tenant entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*?
3. If the tenant's application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the property manager, not all details of the property manager's submissions and arguments are reproduced here. The relevant and important aspects of the property manager's claims and my findings are set out below.

The property manager provided the following undisputed testimony. This tenancy began on June 7, 2020 and is currently ongoing. Monthly rent in the amount of \$2,350.00 is payable on the first day of each month. A security deposit of \$1,175.00 and was paid by the tenant to the landlord.

The property manager testified that on January 13, 2021 the Notice was posted on the tenant's door. The Notice was entered into evidence. The tenant's application for dispute resolution states that the Notice was delivered on January 13, 2021 by posting on the door of the subject rental property. The Notice is dated January 13, 2021 and has an effective date of January 26, 2021. The Notice states that the tenant failed to pay \$10,750.00 in unpaid rent that was due on January 1, 2021.

The property manager entered into evidence a photograph showing all three pages of the Notice taped to the tenant's door.

The tenant filed this application for dispute resolution on January 29, 2020, after the effective date of this Notice. The tenant's application for dispute resolution states:

Due to covid restrictions I have been unable to attend my full-time employment and as such receive full salary. Even though all amenities are closed at building and restrictions in place, the landlord has not adjusted rent accordingly I am filling late because of covid related sickness whereby which I self-quaranteend myself and was unable to leave my apartment and source and use the needed tools to file a dispute (ie laptop or computer)

The property manager testified that on January 27, 2021 the tenant paid \$200.00 towards the outstanding rent and has made no payments since then.

Analysis

Rule 7 of the Residential Tenancy Branch Rules of Procedure provides in part as follows:

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. 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.

The tenant failed to attend this hearing. Pursuant to Rule 7 of the Residential Tenancy Branch Rules of Procedure, I dismiss the tenant's application without leave to reapply.

Section 88 of the *Act* states that a Notice may be served on the tenant by posting. I accept the property manager's undisputed testimony that the Notice was posted on the tenant's door on January 13, 2021. This finding is supported by the tenant's application for dispute resolution which states that the Notice was delivered on January 13, 2021. I find that the tenant was deemed served with the Notice on January 16, 2021, three days after its posting, in accordance with sections 88 and 90 of the *Act*. Upon review of the Notice I find that it meets the form and content requirements of section 52 of the *Act*.

Based on the undisputed testimony of the property manager, I find that the tenant failed to pay the outstanding rent or apply to cancel the Notice within five days of receiving the Notice, contrary to s. 46(4) of the *Act*. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. Pursuant to my above findings, I uphold the Notice.

Section 55 of the *Act* states 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:

- the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Since I have dismissed the tenant's application, upheld the Notice and have found that the Notice meets the form and content requirements of section 52 of the *Act*, I find that the landlord is entitled to a two day Order of Possession, pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

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

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. 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 *Residential Tenancy Act*.

Dated: April 26, 2021

Residential Tenancy Branch