



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 168289 Holding Ince
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPR-DR
Tenant: CNR-MT

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The tenant sought more time to cancel a notice to end tenancy and to cancel a notice to end tenancy. The landlord sought an order of possession.

The hearing was conducted via teleconference and was attended by the landlord's agent only.

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally on September 24, 2021, in accordance with Section 89.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

In addition, this hearing included both the landlord's and the tenant's respective Applications. As such, I am satisfied that the tenant was aware of this hearing and the subject to be dealt with at the time that he submitted his Application for Dispute Resolution.

Furthermore, the hearing had been re-scheduled twice due to the requirements of the Residential Tenancy Branch and each time both parties were informed by email and by phone.

Residential Tenancy Branch Rule of Procedure 7.1 states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

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.

In the absence of the tenant to present his application and evidence, I dismiss the tenant's Application for Dispute Resolution, in its entirety, without leave to reapply.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent, pursuant to Sections 46 and 55 of the *Act*.

Background and Evidence

The landlord testified that while the original tenancy began in December 2020, the tenancy was altered in March 2021 to include an additional room and an increase in the rent amount. The landlord submitted that beginning on March 1, 2021 the verbal tenancy agreement allowed for rent in the amount of \$1,000.00 due on the first of each month.

The landlord submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on September 2, 2021, with an effective vacancy date of September 12, 2021, citing that the tenant had failed to pay rent in the amount of \$1,000.00 for the month of September 2021.

The landlord testified the tenant had not paid rent for the month of September as he blamed the landlord for the removal of the tenant's personal property. The landlord also testified the tenant has not paid any rent since the Notice was issued.

I note that despite his absence at this hearing the tenant had submitted an Application for Dispute Resolution seeking more time and to cancel the 10 Day Notice on September 14, 2021. In that application the tenant confirmed he received the Notice on September 3, 2021.

Analysis

Section 26 (1) of the *Act* stipulates that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act*, to deduct all or a portion of the rent.

There is no evidence before me that the tenant had authority under the *Act* to withhold any rent amounts. As such, I find the tenant was required to pay rent when it was due in accordance with the tenancy agreement.

Section 46 allows a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. However, a notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this *Act* to deduct from rent.

In addition, within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an Application for Dispute Resolution.

I accept the landlord's undisputed testimony that the tenant has failed to pay any rent since the 10 Day Notice was issued on September 2, 2021. In addition, while the tenant did submit an Application for Dispute Resolution, he did so after the effective date of the notice, or at least 10 days after it was issued to him. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, pursuant to Section 46(5) of the *Act*.

Section 52 of the *Act* requires that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2, and
(e) when given by a landlord, be in the approved form.

I find the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on September 2, 2021 complies with the requirements set forth in Section 52 of the *Act*.

Conclusion

Based on the above, I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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, 2022

Residential Tenancy Branch