



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPR-DR, MNR-DR, FFL
Tenant: CNR

Introduction

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

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

I note that the hearing was originally scheduled in response to the tenant's Application for Dispute Resolution which was submitted prior to the landlord's Application. The tenant's Application was specifically to dispute a 10 Day Notice to End Tenancy for Unpaid Rent. As such, I am satisfied that the tenant was aware of this hearing and what issues would be discussed and resolved at it.

The landlord provided documentary evidence that 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)* by registered mail on February 8, 2022 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

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

Residential Tenancy Branch Rule of Procedure 4 outlines the requirements for considering amendments to an Application for Dispute Resolution.

Rule 4.1 states that an applicant may amend a claim by completing an Amendment to an Application for Dispute Resolution form and filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch or through a Service BC Office. It goes on to say an amendment may add to, alter or remove claims made in the original application.

Rule 4.2 stipulates that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord testified that the current arrears owed by the tenant total \$8,042.75 and that they would like to amend their Application to include all rental arrears. As this hearing was to deal with the tenant's Application to cancel a notice to end tenancy for unpaid rent and the landlord's Application seeking to end the tenancy and a monetary order for unpaid rent, I find it could easily be anticipated that the landlord would seek to increase the amount of their claim due to the passage of time from the date of application until this matter could be heard.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46, of the *Act*.

Should the tenants fail to succeed in cancelling the 10 Day Notice to End Tenancy for Unpaid Rent, it must be determined if the landlord is entitled to an order of possession; ; for a monetary order for unpaid rent and to recover the filing fee paid from the tenant for their Application, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord has submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on January 22, 2019 for a 1 year fixed-term tenancy beginning on February 1, 2019 and converted to a month-to-month tenancy on February 1, 2020 for a monthly rent of \$1,500.00 due on the 1st of each month, with a security deposit of \$712.50 paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on October 7, 2021 with an effective vacancy date of October 20, 2021 citing the tenant had failed to pay rent in the amount of \$1,875.00 due on October 1, 2021; and
- A Proof of Service document stating the Notice to End Tenancy was posted to the rental unit door at 9:30 a.m. on October 7, 2021, and that this service was witnessed by a third party.

The tenant, on his Application indicated that he received the 10 Day Notice on October 10, 2021. The tenant applied to dispute the Notice on October 14, 2021.

The landlord testified that the tenant has failed to pay any rent since October 2021 and has provided a copy of a tenant ledger confirming the amount of arrears totalling \$8,042.75 at the time of this hearing.

Analysis

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.

The section goes on to say that if a tenant who has received a notice under this section does not pay the rent or dispute 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 to which the notice relates by that date.

I find the tenant did submit his application within the required timeframe from the date he received the 10 Day Notice on October 10, 2021 to the date of submission of his Application on October 14, 2021.

However, in the absence of the tenant at the hearing, I accept the landlord's undisputed testimony and evidence confirming the tenant has failed to pay rent in the amount of \$8,042.75. I also accept that on October 7, 2021 (the date the landlord issued the 10 Day Notice) the tenant owed rent to the landlord. In the absence of any evidence to the contrary, I find the tenant had no authority under the Act, regulation or tenancy agreement to withhold any rent payments from the landlord.

As a result, I find the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on October 7, 2021 is valid and enforceable.

In addition, as the tenant has failed to attend this hearing and present his claim, I dismiss his Application for Dispute Resolution, in its entirety, without leave to reapply.

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.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$8,142.75** comprised of \$8,042.75 rent owed and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) 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 25, 2022

Residential Tenancy Branch