

DECISION

Introduction

This hearing dealt with the Tenant's Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of two Landlord's 10 Day Notices to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenant served the Landlord the Notices of Dispute Resolution by registered mail. The Landlord acknowledged such service.

Preliminary Matters

At the outset of the hearing, SM provided the correct legal spelling of his name. The application has been amended accordingly.

Issues to be Decided

Should the Landlord's 10 Day Notices be cancelled? If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on July 1st, 2012, with a current monthly rent of \$1,836.00, due on the first of each month.

This hearing concerned two applications to cancel 10 Day Notices, issued on March 2nd and March 12th of 2023. The first 10 Day Notice cited unpaid rent of \$1,836.00 due on March 1st; the second cited the same amount, due on January 1st. Both Notices were posted to the door of the rental unit.

The parties informed me that a previous arbitrator's decision, which included a grant of an Order of Possession for January 31st, 2024, is under judicial review.

The Landlord XML testified that the Tenant did not pay rent for January. She testified that she chose to apply a cheque given by the Tenant, ostensibly for March rent, as payment for January rent. As a result, XML chose to issue two 10 Day Notices to End Tenancy, citing the same amount but giving different dates on which it was due.

The Tenant agreed with that he had not paid rent in January. He stated that he paid rent in February, pursuant to orders of the BC Supreme Court, and paid rent for March.

Analysis

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 46 of the Act states that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant(s) do not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

I find that the first 10 Day Notice is deemed served to the Tenant on March 5th, 2024, and that the Tenant had until March 11th, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears. I find that the second 10 Day Notice is deemed served to the Tenant on March 15th, 2024, and that the Tenant had until March 20th, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears. The Tenant disputed the Notices on March 6th and March 18th, respectively.

The parties agreed with respect to the essential outlines of this dispute: the Tenant did not pay rent in January 2024, and the question is whether the Tenant was obliged to pay rent that month, or whether by reason of being entitled to compensation under section 51(1) of the Act following a Two Month Notice, he was not.

Section 51(1) of the Act provides that a Tenant is entitled to one month's compensation when a Landlord issues a Two Month Notice:

51 (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1)A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

The Act does not make the one month's compensation conditional: it is payable whether or not the tenancy actually ends pursuant to the Two Month Notice. In effect, it is a cost of serving the Two Month Notice, regardless of the outcome of such a notice. In this case, the effective date of the Two Month Notice was August 31st, 2023. The Two

Month Notice has neither been cancelled by a decision of the Director nor have the parties mutually agreed to withdraw the notice.

As a result, the Landlord was obliged to pay the one month's compensation to the Tenant on or before August 31st, 2023. As the amount was not paid, although it was due under the Act, I find that the Tenant was entitled to apply this amount to any subsequent rent due.

Therefore, the Tenant's application is granted for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act.

The 10 Day Notices of March 2nd and March 12th 2024 are cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

Conclusion

The Tenant's applications are granted for cancellation of the Landlord's two 10 Day Notices to End Tenancy.

The 10 Day Notices of March 2nd and March 12th 2024 are cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: April 11, 2024

Residential Tenancy Branch