



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, FF

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

The landlord received the tenants' written submission. The landlord did not make a written submission.

Issue(s) to be Decided

Should the undated 10 Day Notice to End Tenancy for Unpaid Rent issued be cancelled?

Background and Evidence

There was no dispute that the tenancy commenced on November 1, 2015 and that subsidized rent is \$775.00 per month, due on or before the first day of each month.

On February 22, 2016 the tenant applied to cancel a 10 day Notice to end tenancy for unpaid rent in the sum of \$775.00, owed on February 1, 2016.

The Notice did not include an issue date. The effective date of the Notice had transposed dates, indicating the tenancy would end on the second day of the 19th month of 2016.

The tenant could not recall when he received the Notice. The tenants' application recorded February 19, 2016 as the date the Notice was received. The tenant confirmed that February 19, 2016 was the date the landlord had wanted him to vacate the unit.

The Notice indicated that if the tenant did not pay the rent within five days the tenant was conclusively presumed to have accepted the tenancy would end on the effective date of the Notice.

The tenant confirmed that he did not pay February 2016 rent until March 7, 2016. On March 7, 2016 the tenant also paid \$325.00 of March rent owed. No further rent has been paid.

The tenant said he has the money for rent but has held the funds back due to problems with the tenancy and accusations made about his behaviour. During the hearing the requirement to pay rent when it is due was explained to the tenant.

The tenant submitted two letters issued by landlord. On February 9, 2016 the landlord warned the tenant that his rent was overdue and that they understood it would be paid on that date. The tenant was warned a one month Notice to end tenancy for repeated late payment could be issued.

On February 19, 2016 the landlord issued a letter to the tenant that reminded the tenant of the 10 day Notice ending tenancy given to the tenant on February 10, 2016 and that \$1,106.56 of rent owed remained unpaid. The landlord scheduled a move-out inspection with the tenant.

The landlord said that on February 10, 2016 the landlord and the caretaker posted the Notice to the tenants' door. The tenant was in the backyard and the caretaker told the tenant the Notice was on his door. The landlord saw the tenant remove the Notice from the door.

The tenant could not recall the caretaker speaking to him or when he removed the Notice from the door.

Sections 52 and 68, of the Act were explained to the parties (form and content of Notices and amending a Notice.) The tenant confirmed his understanding of the need to dispute the Notice and the payment of rent.

The landlord said if an Order of possession was issued an effective date of April 30, 2016 would be appropriate.

Analysis

I have considered the content of the Notice, whether the Notice should be amended and the timing of the tenants' application to dispute the Notice.

Section 52 of the Act provides:

Form and content of a notice to end tenancy

52 *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, and*
- (e) when given by a landlord, be in the approved form.*

The Notice did not include the issue date.

Section 68 of the Act provides:

Director's orders: notice to end tenancy

- 68** (1) *If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that*
- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and*
 - (b) in the circumstances, it is reasonable to amend the notice.*
- (2) *Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,*
- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or*
 - (b) set aside or amend a notice given under this Act that does not comply with the Act.*

I find, on the balance of probabilities that the 10 day Notice to end tenancy for unpaid rent was issued on February 10, 2016. The tenant was given a letter on February 19, 2016, reminding him of the February 10, 2016 Notice and the need to vacate; which leads me to make this finding.

Given the absence of an issue date on the Notice and the tenants' confusion regarding the service date of the Notice I have applied section 62(3) of the Act and find that the tenant received the Notice no later than February 19, 2016 and that the application disputing the Notice was made within the required time limit.

I find that the tenant has demonstrated that he knew information was omitted from the Notice, the issue date, and that it is reasonable to amend the Notice to include an issue date of February 19, 2016. The tenant took the step of disputing the Notice; demonstrating that he understood the potential effect of the Notice.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to February 29, 2016. As a result I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit effective February 29, 2016.

The tenant had until February 24, 2016 to pay the rent in full or dispute the Notice and provide proof of payment, in accordance with the Act. The tenant disputed the Notice but has confirmed that he did not pay February 2016 rent until March 7, 2016; outside of the required five days.

Therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; February 29, 2016.

The tenants' application is dismissed.

Section 55(1) of the Act provides:

55 (1) *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*

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

Therefore, as the tenants' application is dismissed, pursuant to section 55(1) of the Act, the landlord has been granted an Order of possession that is effective at **1:00 p.m. on April 30, 2016**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The application is dismissed.

The landlord is entitled to an Order of possession.

This decision is final and binding on the parties 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 13, 2016

Residential Tenancy Branch