



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WENTWORTH PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, PSF, FFT

Introduction

On October 5, 2018, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking the provision of services or facilities pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing and B.C. and G.S. attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing package and some evidence by registered mail on October 12, 2018 and the Landlord confirmed that she received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package and evidence.

The Tenant also advised that he served additional evidence on October 25 and 29, 2018 by registered mail and both parties agreed that these were documents that the Landlord was already in possession of. As such, I have accepted and considered this evidence when rendering this decision.

The Landlord advised that she served their evidence on October 26, 2018 by posting it to the Tenants’ door. As service of this complies with Rule 3.15 of the Rules of Procedure, I have accepted and considered this evidence when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution 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 and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 1, 2014 and rent was currently established at \$1,190.00 per month, due on the first day of each month. A security deposit of \$560.00 and a pet damage deposit of \$560.00 were also paid.

B.C. stated that the Tenants had not paid October 2018 rent in full, so the Notice was served to the Tenants by posting it on the door on October 4, 2018. The Notice indicated that \$1,190.00 was outstanding on October 1, 2018 and that the effective end date of the Notice was October 17, 2018. She advised that the Tenant paid October 2018 and November 2018 rent on October 19, 2018 and she issued receipts for use and occupancy only.

She stated that the Tenant was contacted on October 10, 2018 with respect to the overdue rent and he advised her that he would pay by October 12, 2018; however, he

did not. She stated that he was provided specific days where he could come and pay the rent if he chose.

The Tenant stated that as per a previous settlement decision (the file referred to is listed on the first page of this decision), he went into the office on September 28, 2018 to pay his rent in cash. However, he stated that he waited over 45 minutes, that no one helped him, and that he eventually had to leave. He submitted that he left a note outlining an alternate time that he could pay the rent and that he was contacted by the Landlord on October 10, 2018 to pay the rent; however, he could not make it at that time. He advised that the Landlord misrepresents facts and the truth. He also stated that he encountered similar difficulties with the Landlord when he went to pay September 2018 rent, on August 28, 2018.

The Landlord advised that the Tenant only asks to speak to one particular representative of the business when he wants to pay the rent, but he does not advise the receptionist that he is there to pay the rent. The particular staff member he asks for is often busy and in meetings. She stated that all the staff in the office cannot see who comes to the front desk, so they will not know when he has arrived. She stated that there are many different staff members that can accept his rent; however, he always asks to speak to the same person. The Tenant has been provided with many alternate forms of paying the rent apart from in cash, but the Tenant insists on paying by cash or by electronic transfer, which the Landlord's business is not set up for.

The Tenant stated that he advises the receptionist every time he is there that he is there to pay the rent. He stated that he always pays the rent to the same person. It is his belief that the Landlord is making him wait an unreasonable amount of time in an attempt to discourage him from paying rent in cash. He stated that he is unwilling to purchase post-dated cheques and that he was advised by his bank that post-dated cheques and pre-authorized debit for rent payments was not secure. As such, cash is the only other option for him.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content

of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

The undisputed evidence before me is that the Tenants were deemed to have received the Notice on October 7, 2018. According to Section 46(4) of the *Act*, the Tenants have 5 days pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), 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."*

As the fifth day fell on October 12, 2018, the Tenants must have made his Application by this day at the latest or paid the rent in full to cancel the Notice. The undisputed evidence is that the Tenants made their Application on October 5, 2018 to cancel the Notice. Moreover, as outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenants being deemed to have received the Notice.

While it is the Tenant's belief that he attempted to comply with the previous settlement agreement by attending the Landlord's office to pay the rent before the day it was due, this does not change the fact that he was served the Notice and the reason he did not pay the rent within the required five days is that he did "not have time on the same day [October 10] and will go pay for [his] rent when [he has] time to go to their office during their open hour[sic]". I do not find that the previous settlement agreement allowed the Tenant the authority to pay the rent at his convenience. As it was the Tenant's choice to pay the rent in cash, it is his obligation to pay the rent in full according to the terms

stipulated in the agreement. Barring that, rent must be paid within the time frame required as per the Notice. This was not done, and I am not satisfied that the Tenants had a valid reason for withholding the rent and not paying the rent within the required time frame after being deemed to have received the Notice.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession that takes effect at **1:00 PM on November 30, 2018 after service of this Order** on the Tenants, pursuant to Sections 52 and 55 of the *Act*.

As the Tenants were unsuccessful in this Application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I dismiss the Tenants' Application for Dispute Resolution in its entirety and I uphold the Notice. I grant an Order of Possession to the Landlord effective at **1:00 PM on November 30, 2018 after service of this Order** on the Tenants. Should the Tenants 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: November 14, 2018

Residential Tenancy Branch