



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants: CNC CNR

Landlords: OPR MNRL-S FFL

Introduction

This hearing dealt with applications from both the tenant and the landlord pursuant to the *Residential Tenancy Act* (the *Act*).

The tenant applied for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*; and
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) pursuant to section 46 of the *Act*.

The landlord applied for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*;
- a monetary award for unpaid rent and to retain the security deposit in partial satisfaction of the monetary award pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, and to make submissions. Landlord's agent R.J. attended on behalf of the landlords and is herein referred to as "the landlord". Tenant S.V. attended and spoke on behalf of both tenants and is herein referred to as "the tenant".

As both parties were in attendance at the hearing on their own applications, I find that both parties were sufficiently served with the notice of the hearing in accordance with section 71 of the *Act*. The tenant testified that he had tried to send his evidence by registered mail in the dispute resolution package, but the package was returned as the

tenant had written the incorrect street number in the address. The tenant testified that he then sent his evidence by regular mail and email to the landlord, however the landlord denied receipt of any of the tenant's evidence. The only evidence before both parties were the copies of the One Month Notice and the 10 Day Notice.

Rule 3.5 and 3.16 of the Residential Tenancy Branch Rules of Procedure requires that both applicants and respondents must be prepared to demonstrate service of all their evidence they intend to rely on at the hearing.

In accordance with the above-noted Rules, as the landlord denied receipt of the tenant's evidence, and as the tenant was unable to demonstrate that the applicant was served with their evidence, and as email is not an accepted method of service of documents under section 88 of the *Act*, the tenant's evidence was not considered in this matter, save for copies of the One Month Notice and 10 Day Notice which both parties confirmed to have in their possession.

In this matter, the landlord testified that the landlord did not submit any evidence to rely on at this hearing.

Preliminary Issue – Amendment to the Applications for Dispute Resolution

At the outset of the hearing, the parties provided corrections to the named parties to this matter. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended both the tenant's and the landlord's applications to correctly name the parties to this matter.

Issue(s) to be Decided

Should one or both of the landlord's notices to end tenancy be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of one of the notices? Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The parties confirmed the following terms of the tenancy agreement:

- This tenancy began as a fixed term scheduled to end on July 31, 2019, at which point it converted to a month-to-month tenancy.
- Monthly rent of \$2,600.00 is payable on the first of the month.
- The tenants paid a security deposit of \$1,300.00 which continues to be held by the landlords.

The landlord testified that a One Month Notice dated June 29, 2019 was posted on the tenants' door on that same day. The tenant testified that his memory was not that good and he could not recall when he received the One Month Notice and so referred to what he had stated on his Application for Dispute Resolution. The tenant's Application indicated that he received the One Month Notice on July 1, 2019. The tenant submitted the Application to dispute the One Month Notice on July 12, 2019. The tenant testified that he did not know that he had only 10 days to dispute the notice as he thought he had 15 days.

The landlord claimed that the tenant failed to pay rent for the months of July, August and September 2019. The tenant disputed the landlord's claim and testified that he paid rent for these months by e-transfer to the same email address previously used to make rent payments. The tenant testified that he had received confirmations that the transactions were completed and he checked with the bank to confirm whether there had been any issues. As explained earlier in this Decision, the tenant's submitted documentary evidence in support of his claims has not been considered in this matter as the evidence was not confirmed served on the landlord.

The landlord testified that he did not check with the bank to follow-up regarding any issues with the payments, but that the owner of the rental unit who was the person receiving the rent payments worked at the bank. The landlord did not submit any evidence such as a rent ledger or bank statements to confirm which rent payments were and were not received to the designated account.

Analysis

Based on the testimony of the parties, on a balance of probabilities, in the matter pertaining to the One Month Notice, I find that the tenant received the One Month Notice on July 1, 2019 and failed to dispute the notice within 10 days as he thought that he had 15 days in which to dispute the notice. Therefore, in accordance with section 47(5)(a) of the *Act*, I find the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. In this case, the effective date of the notice

was August 1, 2019. As such, the tenant's application to cancel the One Month Notice is dismissed.

Section 55 of the *Act* requires that the landlord is entitled to an order of possession if the tenant's Application seeking to cancel a notice to end tenancy is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*. In this case, having reviewed the One Month Notice, I find that the notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord; provides the address of the rental unit; states the effective date of the notice; and explains the grounds for the tenancy to end.

Therefore, in accordance with sections 47(5)(b) and 55 of the *Act*, I find that the landlord is entitled to an Order of Possession. As the effective date of the notice has now passed, the Order of Possession is effective two days after service on the tenant.

As the landlord has been granted an Order of Possession on the basis of the One Month Notice, I dismiss the landlord's application for an Order of Possession on the basis of the 10 Day Notice as moot.

In the matter pertaining to the landlord's claim for a monetary award for unpaid rent for the months of July, August and September 2019, the parties provided disputed testimony as to whether the landlord was paid the rent by the tenant via electronic transfer.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

In the case before me, other than the testimony of the landlord's agent at the hearing, the landlord has not provided any corroborating evidence, such as a rent ledger, a bank statement for the time period from July to September 2019, or a statement from the landlord's bank representative to support the testimony of the landlord's agent during the hearing that no electronic transfers were received by the landlord from the tenant for these months. As the tenant disputed this version of events, without further corroborating evidence from the landlord, based on the testimony presented, on a balance of probabilities, I find that the landlord has failed to provide sufficient evidence to establish that the tenant failed to pay rent for the months of July, August and September 2019. As such, the landlord's claim for a monetary award for unpaid rent is dismissed.

As the landlord was unsuccessful in obtaining a monetary award through their application, I find that the landlord is not entitled to recover the cost of the filing fee from the tenant.

Conclusion

Pursuant to sections 47(5) and 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service of the Order** on the tenants. The landlord is provided with this Order in the above terms and the landlord must serve the tenants with this Order as soon as possible. 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.

The landlord's claim for a monetary award on the basis of unpaid rent is dismissed.

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: September 18, 2019

Residential Tenancy Branch