



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1035412 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR, LRE, RP, LAT**

Introduction

This hearing was scheduled to deal with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to sections 46 and 55;
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70;
- An order for regular repairs pursuant to sections 32 and 62; and
- Authorization to change the locks to the rental unit pursuant to section 31.

The applicant/tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:50 a.m. to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing, represented by property manager PL ("landlord") and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord acknowledged being served with the tenants' Application for Dispute Resolution Proceedings Package.

Rule 7.3 of the Rules of Procedure also provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply. Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend to present evidence, any written

submissions supplied may or may not be considered. Only the evidence referred to by the landlord was used in this this decision.

Preliminary Issue

The rental unit is an apartment with a unit number, not specified in the tenant's application. In accordance with section 64(3)(c) of the *Act*, I amend the tenant's application to reflect the unit number with the civic address as the rental unit. The correct address is shown on the cover page of this decision.

Background and Evidence

The tenant did not attend to present any evidence regarding the merits of his application for me to consider.

The landlord gave the following undisputed testimony. The tenancy began on July 1, 2020 with rent set at \$1,550.00 per month, payable on the first day of the month. The tenant paid rent for the months of July and August but stopped paying in September.

On November 5, 2020, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("notice") by taping it to the tenant's door. The service was witnessed by ML who provided corroborative testimony. The landlord testified that he personally served the tenant with another copy of the notice to end tenancy on November 10, 2020 when the tenant denied to the landlord receipt of the first copy.

Neither the tenant nor the landlord provided a copy of the notice to end tenancy, so the landlord gave the following testimony.

- The notice is signed by the landlord, PL and dated November 5, 2020.
- The effective date stated on the notice is November 15, 2020.
- The address of the unit is provided and was read out to me.
- The notice states the tenant failed to pay rent in the amount of \$1,550.00 that was due on November 1, 2020.
- The landlord testified that he provided the tenant with an additional piece of paper indicating the tenant failed to pay rent for September and October, 2020 as well.
- The landlord testified the notice was drafted on the approved form, last revised 04/2016.

The landlord testified that since serving the tenant with the notice, no rent has been paid.

Analysis

The tenant did not attend the hearing which was scheduled by conference call at 9:30 a.m. and concluded at 9:50 a.m. As he did not attend, he did not present evidence regarding the merits of his application for me to consider.

The landlord provided undisputed evidence, supported by witness testimony that the tenant was served with the landlord's notice to end tenancy on November 5, 2020. In accordance with sections 88 and 90 of the *Act*, I deem the notice served five days after it was posted to the tenant's door, on November 8, 2020.

The tenant filed his Application for Dispute Resolution on November 19, 2020. The tenant failed to pay the full rent identified as owing within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions **within five days** led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by November 15, 2020. As that has not occurred, I find that the landlord is entitled to an Order of Possession effective 2 days after service. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

For greater certainty, section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. Based on the undisputed evidence of the landlord, I find the tenant had no right to deduct any portion of the rent. He failed to pay the \$1,500.00 rent for the month of November 2020 contrary to section 26 of the *Act*. Given this finding, I uphold the landlord's notice to end tenancy.

Section 55 states:

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.

Based on the landlord's oral description of the Notice, I find that it complies with the form and content provisions of section 52 of the *Act*.

As this tenancy has ended, the remainder of the tenant's application is dismissed without leave to reapply.

Conclusion

I issue an Order of Possession effective 2 days after service upon the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

The remainder of the tenant's Application for Dispute Resolution is dismissed without leave to reapply.

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 09, 2021

Residential Tenancy Branch