



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNR

Introduction

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

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46 (the 10 Day Notice)

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide testimony and present evidence.

Preliminary and Procedural Matters – Late Evidence and Amendment of Application

Rule 3.14 and Rule 4.6 of the Residential Tenancy Branch (the Branch) Rules of Procedure requires an applicant's evidence and any amendment to an application be received by the respondent and the Branch not less than 14 days before the hearing. The tenant submitted an amendment application and additional evidence in a package received by the Branch on May 9, 2017, two days prior to the hearing. This package was also sent to the landlord by registered mail on May 9, 2017 but the landlord had not yet received it at the time of the hearing. The tenant's amendment and additional evidence package was not accepted or considered in this decision.

Issues

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on October 1, 2015 with a monthly rent of \$760.00 payable on the 1st day of each month. The tenant paid a security deposit of \$380.00 at the start of the tenancy.

The parties agreed that the tenants received the 10 Day Notice on April 6, 2017. The outstanding rent amount as per the Notice was \$760.00 which was due on April 1, 2017.

The landlord testified that the tenant did not pay the full amount of the arrears indicated on the 10 Day Notice within five days of receipt and that the full amount is still outstanding. The tenant acknowledged the outstanding rent was not paid within 5 days after receiving the 10 Day Notice.

The tenant's application to cancel the 10 Day Notice was filed on April 6, 2017 within the time period permitted under the Act.

Analysis

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 26 of the Act requires 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.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application must be dismissed as the tenant acknowledged rent was not paid within 5 days after receiving the 10 Day Notice nor did the tenant have a right under this Act to deduct or withhold all or a portion of the rent.

Section 55(1) of the *Act* states that if a tenant applies to dispute a notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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: May 11, 2017

Residential Tenancy Branch