Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes   OPR MNR CNR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;

Tenants:

- cancellation of the landlord's 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 affirmed testimony and present evidence. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

Preliminary Issue: Particulars of Landlord's Application for a monetary order

Pursuant to paragraph 59(2)(b), an application of dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

The landlord's application seeks an order of possession for unpaid rent as well as a monetary order for unpaid rent. The landlord submitted a monetary order worksheet with his original application claiming unpaid rent in the amount of $5625.00. As per the worksheet, this included outstanding rent from August 2017 to October 2017. As per this worksheet, the outstanding rent for August 2017 included $75.00 from a "previous month".

On December 7, 2017, the landlord amended the monetary aspect of the application to $10,150.00. A revised monetary order worksheet was not on file. In the hearing, the landlord referred to a spreadsheet which he sent to the tenants, but this spreadsheet evidence was also not on file. In the hearing, the landlord also testified that an amount of $3625.00 was outstanding from the previous year but did not provide any breakdown of what this amount was comprised of.

The tenants disputed the amount of outstanding rent as claimed by the landlord and testified that they have bank statements in support of payments made. The tenant's also failed to submit any supporting documents for such payments.

I find the landlord's application for a monetary order does not comply with section 59(2) of the Act as the landlord failed to provide the full particulars of the dispute including a monetary order worksheet with a detailed calculation of the outstanding rent being claimed.

Therefore, I dismiss the landlord's application pertaining to a monetary order with leave to reapply.

Issues

Is the landlord entitled to an order of possession for unpaid rent or should the 10 Day Notice be cancelled?

Background and Evidence

The tenancy began on April 1, 2016 with a monthly rent of $1850.00 payable on the 1st day of each month.

The landlord testified that on October 3, 2017, he served the tenants with the 10 Day Notice by posting a copy to the door of the rental premises. A witnessed proof of service of this Notice was provided with the application.

The landlord testified that the tenants did not pay the outstanding amount of rent as indicated on the 10 Day Notice within five days of service of the Notice. As per the Notice, an amount of $5625.00 was outstanding as of October 1, 2017. The landlord testified the tenants have not made any rent payments since the service of the Notice up to the date of the hearing.

The tenants acknowledged service of the 10 Day Notice. The tenants disputed the amount of outstanding rent as indicated on the Notice and submitted that in their calculation only an amount of $1350.00 was outstanding prior to October 1, 2017. The tenants acknowledged they did not pay any rent for October 2017 and they have not paid any rent since the Notice was received.

Analysis

I am satisfied that the tenants were served with the 10 Day Notice on October 3, 2017.

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 Notice or dispute the 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 tenants application must be dismissed as the tenant acknowledged rent was not paid in full within 5 days after receiving the notice nor did the tenant have a right under this Act to deduct all or a portion of the rent. Although the tenant's disputed the amount of outstanding rent as claimed by the landlord, the tenants ought to have still paid at least the amount they agreed was outstanding and paid rent for October 2017 and beyond.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's 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: December 22, 2017

_____
Residential Tenancy Branch