



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

This decision pertains to the tenant's application for dispute resolution made on August 14, 2018, under the *Residential Tenancy Act* (the "Act"). The tenant seeks the following relief:

1. a cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"); and,
2. an order for the landlord to comply with the Act.

The landlord attended the hearing before me and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant did not attend.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application are considered in my decision.

I note that section 55 of the Act requires that when a tenant applies 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's notice to end tenancy complies with the Act.

Issues to be Decided

1. Is the tenant entitled to a cancellation of the Notice?
2. Is the tenant entitled to an order for the landlord to comply with the Act?

Background and Evidence

Submitted into evidence was the Notice, which was served on the tenant by the landlord on August 9, 2018, for unpaid rent in the amount of \$1,300.00, that was due on August 1, 2018. The method of service of the Notice was "On the door in mail box or mail slot." Service was effected by the landlord himself on that date.

Also included in evidence was a Notice served on May 1, 2018, served personally on the tenant, for unpaid rent in the amount of \$2,600.00 due on April 1, 2018, and May 1, 2018.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

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 the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. The tenant applied to dispute the Notice within the statutory timeline but failed to attend the hearing.

The Notice submitted into evidence establishes that the tenant did not pay rent when it was due. The Notice was served by the landlord on the tenant pursuant to section 88 of the Act.

Taking into consideration the undisputed evidence before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the grounds on which the Notice is based. I find that the tenant failed to pay rent when due, in breach of the Act.

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.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must (1) be signed and dated by the landlord, (2) give the address of the rental unit, (3) state the effective date of the notice, (4) state the grounds for ending the tenancy, and (5) be in the approved form.

Having reviewed the Notice, I find that it complies with section 52 of the Act.

Pursuant to sections 46 and 55 of the Act, I grant an order of possession to the landlord.

Conclusion

I dismiss the tenant's application without leave to reapply.

I hereby grant the landlord an order of possession, which must be served on the tenant and is effective two (2) days after service upon the tenant. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: October 4, 2018

Residential Tenancy Branch