



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This decision pertains to the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenant seeks an order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to section 46(4) of the Act.

A dispute resolution hearing was convened, and the landlord and her interpreter attended, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant failed to attend.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is 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 an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice")?
2. If the tenant is not entitled to an order cancelling the Notice, is the landlord entitled to an order of possession?

Background and Evidence

The landlord testified that the tenancy commenced on July 1, 2018. Monthly rent is \$775.00 due on the first of the month. The landlord further testified that the tenant has failed to pay rent for August, September and October 2018.

The landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in-person on the tenant on August 14, 2018, with an (incorrect) effective end of tenancy date of August 18, 2018. (I note that the corrected date is August 24, 2018.)

I note that Residential Tenancy Branch file information reflects that the tenant attempted to apply for dispute resolution on August 17, 2018 but did not pay the required fee or apply for fee waiver until August 23, 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.

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

Section 59(2) of the Act states that an application for dispute resolution must (a) be in the applicable approved form, (b) include the full particulars of the dispute, and (c) be accompanied by the fee prescribed by the regulations.

The tenant did not comply with section 59(2) of the Act and as such did not apply for dispute resolution, as defined in the Act, within five days of receiving the Notice.

Section 46(5) of the Act states that where a tenant fails to either pay rent or apply for dispute resolution within 5 days is “conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice.

Taking into consideration all of the evidence presented before me, and applying the law

to the facts, I find that the tenant has conclusively presumed to have accepted that the tenancy ends on the corrected date of August 24, 2018. As such, I dismiss the tenant's application without leave to reapply.

Section 55 (1) of the Act states that where 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 dismissed the tenant's application, and having reviewed the Notice, I find that the Notice issued by the landlord on August 14, 2018, complies with the requirements set out in Section 52.

Conclusion

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

I grant the landlord an order of possession for unpaid rent. This order must be served on the tenant and is effective two (2) days after service on 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 11, 2018

Residential Tenancy Branch