Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AA DESERT INN LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   CNR, OLC, FFT

Introduction

This hearing dealt with the Tenant Application for Dispute Resolution under the *Residential Tenancy Act* ("the *Act*), made on May 30, 2018, to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities, (the "Notice") dated April 2, 2018, requesting an order for the Landlord to comply with the *Act* and to recover the filing fee paid for this application. The matter was set for a conference call.

The Manager and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Manager and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Notice dated April 2, 2018, be cancelled pursuant to section 46 of the Act?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the Act?
- Should the Landlord be ordered to comply with the *Act*?
- Is the Tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy agreement shows that this tenancy began on January 1, 2018, as a month to month tenancy. Rent in the amount of $900.00 is to be paid by the first day of each month and that the Tenant paid the Landlord a $450.00 security deposit at the outset of this tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Tenant testified that he had not paid the Rent for April, May, June, July, August and September 2018. The Tenant testified that he had not paid the rent since getting the Notice as he didn't want pay if the Landlord was just going to kick him out. The Tenant testified that the Landlord had included a $5000.00 debit he owes him, on the Notice that was issued, and that is why he disputed the Notice.

The Manager testified that the Landlord is requesting an order of possession to enforce the Notice.

Analysis

Based on the testimony of the Landlords and the Tenant, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted the Notice under section 46(5).

> **Landlord's notice: non-payment of rent**
> **46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
> (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
> (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
> (4) Within 5 days after receiving a notice under this section, the tenant may
> > (a) pay the overdue rent, in which case the notice has no effect, or
> > (b) dispute the notice by making an application for dispute resolution.
> (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
> > (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
> > (b) must vacate the rental unit to which the notice relates by that date.

I find that the Tenant received the 10-Day notice dated April 2, 2018, and did apply to dispute the Notice.

I accept the testimony of the Tenant he has not paid the outstanding rent as stated on the notice and that he has not paid rent since getting the notice. I find that the Tenant has not provided any evidence to show that he had permission from the Landlords to withhold the rent, or that he had an order from this office allowing him to withhold any portion of the rent. Therefore, I find that the Tenant is in breach of section 26 of the *Act* by not paying the rent in accordance with the tenancy agreement and I dismiss the Tenant's application to cancel the Notice.

I have reviewed the Notice to End Tenancy, and I find the Notice complies with section 52 of the *Act*. As I have dismissed the Tenant's application, pursuant to section 55 of the *Act,* I must grant the Landlords an order of possession to the rental unit.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective two days after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

As this tenancy is ending in accordance with the Notice, I find that there is no need to address the Tenant's additional requesting for an order, for the Landlord to comply with 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 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: September 14, 2018

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Residential Tenancy Branch