



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR LRE MNDC PSF FF

Introduction

This hearing was convened in response to an application by the tenant filed December 15, 2018 pursuant to the *Residential Tenancy Act* (the “Act”) for several unrelated items in dispute but primarily to cancel a 10 Day Notice to End Tenancy for unpaid rent pursuant to Section 46 of the Act dated December 09, 2018.

The hearing was conducted by conference call. All named parties attended the hearing and were given opportunity to provide testimony and present evidence. The parties were also provided with opportunity to mutually resolve their dispute to no avail.

Preliminary matters

The *Style of Cause* has been altered to reflect the full name of the landlord.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. It is my determination that the primary claim regarding the 10 Day Notice to End is not sufficiently related to the tenant’s other claims in this matter to warrant they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy. Therefore, I exercise my discretion to dismiss the tenant’s other claims in this matter, with leave to reapply.

Issues to be decided

Should the landlord’s 10 Day Notice to End Tenancy be cancelled?

If not, is the landlord entitled to an order of possession?

Background and Evidence

The relevant evidence in this matter is as follows. It is undisputed that the payable monthly rent is \$1250.00.

The parties agreed that the tenant received the 10 Day Notice to End Tenancy for Unpaid Rent on December 10, 2018 stating the tenant owed arrears of rent in the amount of \$2850.00 with which the tenant agrees.

It is undisputed that the tenant did not pay the full amount of the arrears indicated on the Notice within five days of being served. The tenant acknowledged the outstanding rent was not paid within 5 days after receiving the Notice and that the same amount is still outstanding. It is undisputed that the tenant has further not paid subsequent owed rent for the month of January 2019.

Analysis

The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: www.gov.bc.ca/landlordtenant

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent 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 prescribed by the Act, I find the tenant has failed to provide proof they paid the outstanding rent nor have a right under this Act to deduct all or a portion of the rent. As a result I must **dismiss** the tenant's application to cancel the landlord's Notice to End of this matter.

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 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.

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.

Conclusion

The tenant's application is dismissed. The landlord is given an order of Possession.

This Decision is final and binding.

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: January 29, 2019

Residential Tenancy Branch