



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;

Both the tenant and the landlord appeared at the hearing. Both parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that on January 20, 2019, the landlord was served, by way of personal service by hand, the Tenant's Application for Dispute Resolution hearing package ("dispute resolution hearing package"), which included the tenant's evidence. The landlord confirmed receipt of the dispute resolution hearing package and evidence on January 20, 2019. Therefore, I find that the landlord has been duly served with the tenant's dispute resolution hearing package and evidence in accordance with section 89 of the Act.

I note that Section 55 of Act requires that when a tenant submits an Application 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 has issued a notice to end tenancy that is compliant with the Act.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and /or arguments are reproduced here. I refer to only the relevant facts and issues in this decision. The principal aspects of the tenant's claim and my findings are set out below.

The parties agreed that a tenancy was entered into between the parties, which began on September 01, 2017. The monthly rent was determined to be due on the last day of each month preceding the month for which it is due. The current rent amount owed each month is \$425.00. The parties agreed that the tenant provided a security deposit in the amount of \$212.50 which continues to be held by the landlord. Neither party submitted a copy of a written tenancy agreement as evidence. The parties agreed to the particulars of the tenancy as cited above.

The subject rental unit is one bedroom located within a single-family detached house. The owner of the house does not live in the house.

The landlord testified that the tenant did not pay any rent, either in full or in any partial amount, for the month of January 2019, which was due by December 31, 2018. The landlord testified that he issued a 10 Day Notice, dated January 14, 2019, which the landlord states was served to the tenant on January 14, 2019, for \$425.00 in unpaid rent due on December 30, 2018, with a stated effective vacancy date of January 27, 2019.

The landlord testified that the tenant was not permitted to withhold any portion of the monthly rent owed at any time during the tenancy, either in accordance with the Act or by mutual agreement between the parties.

The tenant confirmed that he received the 10 Day Notice on January 14, 2019. The tenant testified that the 10 Day Notice had been posted to the door of his rental unit.

The tenant testified that he did not provide any payment for rent, owed in the amount of \$425.00, for the month of January 2019. The tenant acknowledged that he understood that the rent owed for January 2019 was due, at the very latest, by December 31, 2019.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

Subsection 26(1) of the *Act* sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the uncontested testimony provided by the landlord, which depicts that the tenant was not permitted to withhold any portion of the monthly rent owed at any time during the tenancy, either in accordance with the Act or by mutual agreement between the parties. Therefore, I find that the tenant was not permitted to withhold rent under section 26(1) of the Act

The tenant provided sworn testimony that he did not pay rent owed for the month of January 2019. Therefore, the landlord had leave under section 46 of the Act to issue a 10 Day Notice for non-payment of rent owed for the month of January 2019.

The tenant provided affirmed testimony that he received the 10 Day Notice on January 14, 2019.

The tenant provided sworn testimony that he did not pay rent for the month of January 2019. Based on the testimony provided by the parties, I find that the tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice and failed to prove that he had grounds to withhold payment of the rent in accordance with either section 26(1) of the Act.

I also note that I accept the undisputed testimony of the landlord that the tenant had no authority to withhold rent and that the tenant never paid the outstanding rent. Therefore, section 46(3) and 46(4)(a) of the Act do not apply.

Accordingly, I dismiss the tenant's application to cancel the 10 Day Notice dated January 14, 2019.

Section 55 of the Act provides that if a tenant applies to dispute a notice to end tenancy, an Arbitrator is required to issue an Order of Possession if the tenant's application is dismissed, and if the notice complies with section 52 of the Act.

Section 52 of the Act outlines the form and content required for a notice to end tenancy issued under the Act. I have reviewed the 10 Day Notice dated January 14, 2019 and find it complies with section 52 of the Act in form and content.

I have dismissed the tenant's application to dispute the 10 Day Notice and found the 10 Day Notice complies with section 52 of the Act. Therefore, pursuant to section 55 of the Act, I issue the landlord an Order of Possession for the rental unit.

I grant the landlord an Order of Possession effective two days after service on the tenant, as the effective date of the 10 Day Notice has passed and the tenant has not paid rent for the month of January 2019.

Conclusion

The tenant's application is dismissed, in its entirety, without leave to re-apply.

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(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: March 01, 2019

Residential Tenancy Branch