



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MT, FFT

Introduction

On February 1, 2019, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued on January 19, 2019, and for more time to file to dispute a notice. The matter was set for a conference call.

The Landlord, the Landlord’s wife, the Landlord’s Counsel and a Translator for the Landlord (the “Landlord”) attended the conference call hearing; however, the Tenant did not. As the Tenant is the applicants in this hearing, I find that the Tenant had been duly notified of the Notice of Hearing in accordance with the *Act*.

The Landlord was affirmed to be truthful in his testimony and was provided with the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

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 Tenant be granted more time to file to dispute the Notice?
- Should the Notice to End Tenancy be cancelled?
- If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord testified that the tenancy began on January 1, 2016. Rent in the amount of \$1,600.00 is to be paid by the first day of each month. At the outset of the tenancy, the Tenants paid the Landlord an \$800.00 security deposit.

The Landlord testified that he served the 10-Day Notice to the Tenant on January 19, 2019, by personally serving the Notice to the Tenant. The 10-Day Notice has an effective date of January 29, 2019, and an outstanding rent amount of \$13,300.00 and outstanding utilities in the amount of \$7,603.52.

The Landlord also testified that the Tenant had not paid the outstanding rent as indicated on the Notice and had not moved out of the rental unit in accordance with the Notice.

The Landlord is requesting that the Notice is enforced and that an order of possession is issued. The Landlord requested that, since the effective date of his Notice has passed, that the order of possession is dated for five days after this hearing, on March 20, 2018.

Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant received the Notice on January 19, 2019, and did apply to dispute the Notice. This matter was set for hearing by telephone conference call at 11:00 a.m. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing was the Landlord.

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

7.1 The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Therefore, as the Tenant did not attend the hearing by 11:11 a.m., I dismiss the Tenant's application without leave to reapply.

Section 55(1) of the *Act* states:

Order of possession for the landlord

- 55(1)** If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's 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 Landlord an order of possession to the rental unit.

Therefore, I find that the Landlord is entitled to an order of possession effective not later than 1:00 p.m. on March 20, 2019. The Tenant is cautioned that the costs of such enforcement is recoverable from the Tenant.

Conclusion

The Tenant's application is dismissed, without leave to reapply.

I grant an **Order of Possession** to the Landlord effective not later than **1:00 p.m. on March 20, 2019**. The Tenants must be served with this Order. Should the tenants 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 14, 2019

Residential Tenancy Branch