



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlords: OPR; For the tenant: CNR, MT, PSF

Introduction

In this dispute, the landlords seek an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Residential Tenancy Act* (the “Act”). The tenant sought an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent, an extension of time in which to dispute the notice, and, an order that the landlords provide services or facilities, pursuant to sections 46(4), 66(1), and 62 of the Act, respectively.

The tenant applied for dispute resolution on March 19, 2019 and the landlords applied for dispute resolution on March 24, 2019.

A dispute resolution hearing occurred on April 18, 2019. The landlords attended the hearing and were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenant did not attend.

The landlords confirmed that they served copies of their evidence on the tenant.

I reviewed evidence that met the requirements of the *Rules of Procedure* and to which I was referred, but have only considered evidence relevant to the issues of these applications in this decision. This decision addresses both applications.

The landlords confirmed that they paid the \$100.00 filing fee and as such I have amended their application to include a claim for this amount, pursuant to section 72 of the Act.

Issues

1. Is the tenant entitled to more time in which to dispute a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”)?
2. If yes, is the tenant entitled to an order cancelling the 10 Day Notice?
3. If not, are the landlords entitled to an order of possession for unpaid rent?
4. Is the tenant entitled to an order that the landlords provide services or facilities?
5. Are the landlords entitled to compensation for recovery of the filing fee?

Background and Evidence

The landlord (R.A.) testified that the tenancy began on February 1, 2019. Monthly rent is \$1,200.00, due on the first of the month, and the tenant paid a security deposit of \$600.00 which the landlords currently retain. There is no written tenancy agreement.

The landlord further testified that the tenant failed to pay rent of \$1,200.00 on March 1, 2019. As a result, the landlords issued the 10 Day Notice (a copy of which was submitted into evidence) on March 9, 2019 with an effective end of tenancy date of March 19, 2019.

Also submitted into evidence by the landlords was a document titled “Text by Text History of Tenant [Tenant’s Name],” in which the landlord repeatedly asks the tenant about rent and for which the tenant provides many excuses and less-than-credible explanations.

A text message conversation between the landlord (B.A.) and the tenant occurred on March 9, 2019 in which the landlord stated that they were going to issue the 10 Day Notice, and the tenant acknowledged this. The tenant then texted the following to the landlord at 6:09 PM (reproduced as written):

no one is home you can slide it under the door by washer and dryer I will accept it when I get home

The landlord subsequently served the 10 Day Notice by sliding it under the door as instructed, and accepted, by the tenant.

Finally, the landlord testified that the tenant has not paid any rent for April 2019.

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 10 Day Notice informed the tenant that the 10 Day Notice would be cancelled if she paid rent within five days of service. The 10 Day Notice also explains that the tenant had five days from the date of service to dispute the 10 Day Notice by filing an Application for Dispute Resolution.

The landlords testified, and provided documentary evidence to support their submission, that the tenant did not pay rent when it was due on March 1, 2019 and have also not paid any rent for April 2019. There is no evidence before me that the tenant has a right under the Act to not pay her rent.

I note that there is no evidence establishing when, exactly, the tenant received the 10 Day Notice, and as such I cannot make any findings of fact or law on whether the tenant applied for dispute resolution within the five-day period. I further note that the tenant states in her application that the 10 Day Notice “was put under door at end of hallway that separates our unit from there [sic] house. The notice is not filled out correctly and we have never received a tenancy agreement.”

Under the Act, a notice must be served in accordance with section 88 or 89, and ordinarily a 10 Day Notice to End Tenancy for Unpaid Rent could not be served by being slipped under a door. However, section 71(2)(b) of the Act states that an arbitrator may make an order “that a document has been sufficiently served for the purposes of this Act on a date the director specifies.”

In this case, given that the tenant explicitly accepted under-door service of the 10 Day Notice in her March 9, 2019 text to the landlord, I find that the 10 Day Notice was sufficiently served for the purposes of the Act and that it was served on March 9, 2019. As noted above, however, I do not make any finding as to the exact date on which the 10 Day Notice was received by the tenant.

Pursuant to section 55(1) of the Act, if a tenant files an application to dispute a landlord's notice to end a tenancy, the arbitrator must grant to the landlord an order of possession if (a) the landlord's notice to end tenancy complies with section 52, and (b) the arbitrator, during the dispute resolution proceeding, dismisses the tenant's application.

As the tenant failed to attend I dismiss her application without leave to reapply.

Having reviewed the 10 Day Notice I find that, contrary to what the tenant may believe, that the notice is filled out correctly and complies with section 52 of the Act. Further, having dismissed the tenant's application, I thus grant the landlords an order of possession of the rental unit.

As the landlords were successful in their application I grant them a monetary award of \$100.00 for the filing fee. I order that the landlords retain \$100.00 of the tenant's security deposit in full satisfaction of this award.

Conclusion

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

I grant the landlords an order of possession, which must be served on the tenant and which is effective 48 hours from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is final and binding 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: April 18, 2019

Residential Tenancy Branch