



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR, OLC
For the landlord: OPR, MNR, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) and for an order requiring the landlord to comply with the Act.

The landlord applied for an order of possession for the rental unit pursuant to the 10 Day Notice, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

The tenant and the landlord attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the relevant evidence of the parties before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (“Rules”); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter - I have determined that the portion of the tenant’s application dealing with a request for an order requiring the landlord to comply with the Act is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant’s Application and dealt only with the issue of

the Notice. A decision on this portion of the tenant's Application will be addressed in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent, monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence is that this tenancy began on May 1, 2019, with a monthly rent of \$1,050.00, due on the first day of the month, and a security deposit of \$525.00 being paid by the tenant. The landlord submitted a full copy of the written tenancy agreement.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain and support their Notice.

The landlord submitted that on August 4, 2019, he served the tenant with the Notice, by registered mail, listing unpaid rent of \$3,150.00 as of August 1, 2019. The effective vacancy date listed on the Notice was August 14, 2019.

The landlord asserted that since the issuance of the Notice, he has not received rent from the tenant, and that he owes unpaid rent of \$5,250.00, for the months of June, July, August, September, and October 2019.

While the landlord's original monetary claim is \$3,150.00, he requested that he be allowed to amend his monetary claim to include unpaid rent for September and October 2019.

In response to my inquiry, the landlord said that he attends the residential property, which is an eight-suite house, nearly every day at 6:00 p.m., and is there on the first day of each month at 6:00 p.m. to collect rent.

Tenant's response-

In response, the tenant confirmed that he has not paid rent for the months of June through October 2019, but said that was due to the landlord not coming around to collect it. The tenant confirmed that he is required to pay rent in cash.

Landlord's rebuttal-

The landlord queried why he would not want to collect rent and said that he had encountered the tenant many times, but the tenant always responded that he did not have the rent "assembled".

Analysis

Based on the oral and written evidence of the parties, and on the balance of probabilities, I find the following.

Landlord's application-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenant was served a 10 Day Notice, that the tenant owed the unpaid rent listed and did not pay the outstanding rent within 5 days of service.

I do not find the tenant's testimony that the landlord never came by the rental unit or residential property for five months to collect rent to be believable or reasonable.

Therefore, pursuant to section 55(2)(b) of the Act, I find that the landlord is entitled to and I grant an order of possession for the rental unit effective 2 days after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement, such as bailiff costs, are recoverable from the tenant.

I find it reasonable to amend the landlord's application to include a claim for unpaid rent for the months of September and October 2019.

As the undisputed evidence of both parties is that the tenant failed to pay rent of \$1,050.00 for the months of June, July, August, September and October 2019, each, I therefore find the landlord is entitled to a monetary award of \$5,350.00, comprised of unpaid rent of \$5,250.00 and the \$100.00 filing fee paid by the landlord for this application.

At the landlord's request through his application, I direct the landlord to retain the tenant's security deposit of \$525.00 in partial satisfaction of his monetary award of \$5,350.00.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$4,825.00.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Tenant's application-

As I have granted the landlord's application for an order of possession of the rental unit and monetary order pursuant to the landlord's Notice, I dismiss the tenant's application for cancellation of the Notice, without leave to reapply.

As I have granted the landlord's application for an order of possession of the rental unit, I dismiss the tenant's request for an order requiring the landlord to comply with the Act, without leave to reapply, as the tenancy is ending.

Conclusion

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent and the filing fee has been granted.

The tenant's application is dismissed without leave to reapply as I have granted the landlord's application in full.

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: October 15, 2019

Residential Tenancy Branch