



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *CNR, OLC*

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for nonpayment of rent and for an order directing the landlord to comply with the *Act*.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves.

As both parties were in attendance, I confirmed service of documents. The landlord confirmed receipt the tenant's evidence and stated that he did not file any of his own. I find that the landlord was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began in April 2016. The monthly rent is \$850.00 payable on the first of each month. On September 02, 2019, the landlord served the tenant with a 10-day notice to end tenancy for non-payment of rent in the amount of \$850.00 and utilities in the amount of \$711.53.0. The tenant disputed the notice in a timely manner.

The tenant agreed that she failed to pay rent that was due on October 01, 2019. The tenant stated that she was in the process of moving out but as of November 04, 2019, she had not fully moved out. The landlord added that the tenant had also not paid rent for September 2019 in addition to October and November 2019. The landlord requested an order of possession effective two days after service on the tenant.

Analysis

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy for unpaid rent, on September 02, 2019 and applied to dispute the notice within the legislated time frame of five days. Even though the tenant made application to dispute the notice to end tenancy within five days, I must uphold the notice because the tenant did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy, on the date set out in the notice and must vacate the rental unit by that date. Accordingly, the notice to end tenancy is upheld and therefore the tenant's application to cancel the notice is dismissed.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession effective immediately. Section 55 of the *Residential Tenancy Act* addresses an order of possession for the landlord and states:

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.

In this case, I find that the landlord served the tenant with a notice to end tenancy that complies with section 52 (form and content of notice to end tenancy). Since the tenant did not pay rent within five days of receiving the notice and still owes rent at the time of this hearing, I have dismissed the tenant's application for dispute resolution and have upheld the notice to end tenancy.

Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

During the hearing the tenant provided the landlord with a forwarding address and I updated the tenant's electronic file. The tenant also agreed to allow the landlord to keep the security and pet deposits totaling \$850.00.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective two days after service on the tenant.

Since the tenancy is ending the remainder of the tenant's application is dismissed.

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: November 04, 2019

Residential Tenancy Branch