



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LCA ENTERPRISES LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, LRE, FFT

Introduction

On November 15, 2019, the Tenant made 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, dated November 7, 2019 and to suspend or set conditions on the Landlords right to enter the rental unit.

The matter was set for a conference call hearing. The Tenant and Landlord attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during 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.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to non payment of rent owing under the tenancy agreement. The Tenant's request to suspend or set conditions on the Landlords right to enter the rental unit is dismissed with leave to reapply.

Issues to be Decided

- Should the 10 Day Notice dated November 7, 2019, be cancelled?
- Is the Landlord entitled to an order of possession for the rental unit?

Background and Evidence

The parties testified that the tenancy began on June 24, 2019 as a one-year fixed term tenancy to continue until June 30, 2020. Rent in the amount of \$2,300.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$1,150.00.

The Landlord testified that the Tenant failed to pay the rent when it was due under the tenancy agreement.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 7, 2019 ("the 10 Day Notice").

The Landlord testified that the Tenant was served with the 10 Day Notice by posting the Notice on the Tenants door on November 7, 2019. The 10 Day Notice provides that the Tenant has failed to pay rent in the amount of \$2,300.00 which was due on November 1, 2019. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant testified that he received the 10 Day Notice on November 7, 2019. On November 12, 2019, the Tenant applied online to dispute the Notice. The Tenant paid the \$100.00 filing fee for the online application on November 15, 2019. Residential Tenancy Branch Rule of Procedure 2.6 provides information on when an application is considered to be made. The rule provides:

The Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office.

The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application.

I find that the Tenant received the 10 Day Notice on November 7, 2019 and made an application to dispute the 10 Day Notice on November 15, 2019. I find that the Tenants application to dispute the 10 Day Notice is late.

The Landlord testified that the Tenant did not pay the rent due under the tenancy agreement within 5 days of November 7, 2019, the day the Tenant received the 10 Day Notice.

The Landlord testified that the Tenant has not paid the rent for the rental unit for the month of November 2019, December 2019; and January 2020. The Landlord testified that there is a hearing scheduled in February 2020 to hear her application for dispute resolution for a monetary order to recover the unpaid rent.

In response, the Tenant provided testimony confirming that he did not pay the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice. The Tenant acknowledged that he has not paid the rent for November 2019; December 2019; and January 2020.

The Tenant testified that he should not have to pay the rent and he wants to negotiate an end to the tenancy; however, the Landlord is ignoring him. The Tenant testified that the Landlord provided misleading information to him when the tenancy agreement was signed because he was informed that the building is a smoke free building.

Analysis

Section 26 of the Act provides that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant's application to dispute the 10 Day Notice is late. I also find that the Tenant failed to pay the rent due under the tenancy agreement within five days of receiving the 10 Day Notice.

I find that the Tenant did not have a legal right under the Act to withhold payment of the rent. I find that the Tenant has breached section 26 of the Act and has fundamentally breached the tenancy agreement. The tenancy is ending.

I dismiss the Tenant's application to cancel the 10 Day Notice dated November 7, 2019.

Under section 55 of the Act, when a tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and did not have a legal right to withhold payment of the rent.

The Landlord is granted an order of possession effective two (2) days after service on the Tenant.

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: January 07, 2020

Residential Tenancy Branch