



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FFT

This hearing dealt with the tenant's application pursuant to the Residential Tenancy Act (the Act) for:

- cancellation of the 10 Day Notice to End Tenancy pursuant to section 46 of the *Act*;
- application to recover the filing fee for this application pursuant to section 72 of the *Act*.

The landlords (landlords LW and AW) called into this teleconference at the date and time set for the hearing of this matter. The applicant (tenant) did not, although I waited until 9:43 A.M. to enable her to connect with this teleconference hearing scheduled for 9:30 A.M.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the respondents and I were the only persons who had called into this teleconference hearing.

Rule 7.1 of the Rules of Procedure provides as follows:

7.1 Commencement of the hearing: The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the tenant the hearing proceeded.

Landlord AW confirmed receipt of the tenant's application for dispute resolution but could not recall on what date. I find that the landlord was served with the tenant's application for dispute resolution in accordance with section 89 of the *Act*.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution seeking to cancel a Notice issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed.

Issue to be Decided

1. Is the tenant entitled to cancel the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*?
2. Is the tenant entitled to recover the filing fee, pursuant to section 72 of the *Act*?
3. Are the landlords entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

Landlord AW testified that the tenancy started on January 6, 2020. Rent is \$1,200.00 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$600.00 was collected and the landlords still hold it in Trust. The tenant continues to reside at the rental property.

The landlord AW testified that tenant had not paid the full rent for the months of February and March 2020 and that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), dated February 3, 2020 by posting to the rental unit door on February 3, 2020 and that this service was witnessed by a third party.

The Notice indicates an effective move-out date of February 16, 2020. The tenant did not attend the hearing to present any submissions in relation to the Notice.

Analysis

Based on the landlord's testimony and the notice before me, I find that the tenant was served with a valid Notice. The tenant did file an application to dispute the Notice within 5 days of its receipt but failed to attend the hearing or pay the rent within 5 days of receiving the Notice.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the Notice.

Section 46(4) says that within 5 days after receiving a Notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the Notice by making an application for dispute resolution.

Therefore, pursuant to section 46(5) the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice. The tenant failed to attend the hearing and the overdue rent is still owing to the landlord.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the Notice for unpaid issued by the landlord on February 3, 2020 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I have reviewed all documentary evidence and testimony. I find the form and content of the 10 Day Notice complies with section 52 of the *Act*.

As the tenant continues in occupation, I find the landlord is entitled to an order of possession under section 55 of the *Act*, effective two days after service.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlords effective **two days after service of this order** on the tenant. Should the tenant 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 11, 2020

Residential Tenancy Branch