



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNR MNDC

Introduction

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

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46 (the 10 Day Notice);
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The rental unit is a 2-bedroom unit in a tri-plex. The tenancy with the current landlord began on November 1, 2015. The current monthly rent is \$740.00 payable on the 1st day of each month.

The parties agreed that the tenant received two separate 10 Day Notices on January 10, 2020. The outstanding rent amount as per the 10 Day Notices was \$740.00 which was due on December 1, 2019 and January 1, 2020, respectively.

The landlord testified that the tenant did not pay the full amount of the arrears indicated on the 10 Day Notices within five days of being served and that the full amount is still outstanding.

The tenant acknowledged the outstanding rent was not paid within 5 days after receiving the 10 Day Notices. The tenant testified that he withheld the rent due to an issue of the hot water tank in his unit supplying water to other units in the building.

Analysis

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

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 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*.

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 this 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.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application must be dismissed as the tenant acknowledged rent was not paid within 5 days after receiving the 10 Day Notices nor did the tenant have a right under this Act to deduct all or a portion of the rent.

I find that both the 10 Day Notices issued by the landlord comply with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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 20, 2020

Residential Tenancy Branch