



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNR RP OLC

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);
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

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. No issues were raised with respect to service of the application and respective evidence submissions on file.

Preliminary Issue – Naming of parties

The tenant personally named the landlord's agent as the landlord in her application. The landlord's agent requested the application be amended to name the actual landlord as per the tenancy agreement. The tenant's application has been amended to reflect the landlords identified in the tenancy agreement.

Issues

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

Should the landlord be ordered to comply with the Act and ordered to make repairs?

Background and Evidence

The tenancy began on November 1, 2019 with a monthly rent of \$1600.00 payable on the 1st day of each month.

The parties agreed that the tenants received the 10 Day Notice dated March 10, 2020 on March 11, 2020. The outstanding rent amount as per the 10 Day Notice was \$800.00 which was due on March 1, 2020.

The landlord's agent testified that the tenant did not pay the full amount of the arrears indicated on the 10 Day Notice 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 Notice. The tenant testified that she withheld the rent due to outstanding electrical repair and pest issues.

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 Notice nor did the tenant have a right under this Act to deduct all or a portion of the rent.

I find that the 10 Day Notice issued by the landlord complies 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.

As the tenancy has ended, I make no orders for the landlord to make repairs and/or comply with the Act. This portion of the tenants application is also dismissed without leave to reapply.

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: May 05, 2020

Residential Tenancy Branch