



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *CNR, MT*

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 pursuant to s.46 of the *Residential Tenancy Act*. The tenant also applied for additional time to do so, pursuant to s.66 of the *Residential Tenancy 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. The tenant was accompanied by her agent. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

At the start of the hearing, the tenant explained why she was a day late making application to dispute the notice to end tenancy. The tenant stated that due to technical difficulties, her password did not work, and she was unable to log in to complete her application for dispute resolution. The tenant stated that she had to wait for the next day to contact the office to resolve the problem.

I accept the tenant's testimony and allow her the extra day that she was late making her application for dispute resolution.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The background facts are generally undisputed. The tenancy began in May 2019. The monthly rent is \$1,400.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$700.00 and a pet deposit of \$200.00.

The landlord testified that the tenant failed to pay full rent that was due on March 01, 2020. The tenant agreed that she owed \$700.00 for March 2020. The tenant also agreed that she failed to pay rent since then, except for one payment of \$700.00 on June 22, 2020.

Due to the state of emergency declared by the Province, the landlord was unable to issue a notice to end tenancy for nonpayment of rent. The landlord did make an application for a monetary order for unpaid rent and this was heard on June 22, 2020. In a decision dated June 23, 2020, the Arbitrator awarded the landlord a monetary order for \$4,100.00 which included all unpaid rent up to June 2020 after a deduction of \$900.00 (security and pet deposits) was applied.

On July 18, 2020, the landlord served the tenant with a 10-day notice to end tenancy for non-payment of rent in the amount of \$1,400.00 that was due on March 01, 2020. The landlord agreed that the amount of unpaid rent for March 2020 is \$700.00.

The tenant continues to occupy the rental unit without paying outstanding rent and has not paid any rent for the months of July and August 2020.

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 July 18, 2020 and applied to dispute the notice one day beyond the legislated time frame of five days. I accepted the tenant's reasons for the late application and granted the tenant the extra time to dispute this notice.

Even though the tenant made application to dispute the notice to end tenancy, I must uphold the notice because the tenant did not pay rent for March 2020, 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.

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.

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: August 21, 2020

Residential Tenancy Branch