



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: CNR

Introduction

In this dispute, the tenant seeks to cancel a 10 Day Notice to End a Tenancy for Unpaid Rent (the "Notice") pursuant to section 46 of the *Residential Tenancy Act* (the "Act").

The tenant filed an application for dispute resolution on July 24, 2020 and a dispute resolution hearing was held on September 4, 2020. The landlord and the tenant attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

Issues

Whether the tenant is entitled to an order cancelling the Notice. If he is not, I must decide if the landlord is entitled to an order of possession, under section 55 of the Act.

Background and Evidence

By way of background, the tenancy "officially" began on January 1, 2019, though the tenant moved into the rental unit in November 2018. Monthly rent is \$1,500.00 (plus utilities) which is due on the first of the month. There is no security or pet damage deposit that was paid by the tenant. These facts were not in dispute.

A copy of the written Residential Tenancy Agreement was submitted into evidence.

I note that the tenant's application included the name of his son, who he said was party to a separate tenancy agreement. However, there is no copy of any tenancy agreement in evidence that names the tenant's son, and the landlord denied that there is any

tenancy between him and the son. Rather, the son simply lives with the tenant. Given these facts, I have amended the tenant's application to remove the name of the son, as he is not a party to this legal dispute. Rather, the son is an occupant of the rental unit.

What is in dispute is whether the tenant has paid his rent or not.

The landlord testified that the tenant has not paid for almost the entire period since the start of the tenancy. As of January 1, 2020, the tenant owed rent arrears of \$16,500.00. Regarding the Notice itself, it was served in-person by the landlord on the tenant on July 20, 2020, and a copy of the Notice was submitted in evidence. According to the landlord, the rent arrears have since accumulated to \$24,000.00.

There was submitted into evidence by the landlord a copy of a document titled "Statement on confirmation of debt." The statement references an acknowledgement that the tenant owes the amount claimed on the Notice. Near the bottom of the document is a statement that reads "Signed in good faith and health" on June 23, 2020. The document is, however, not signed by either party. The tenant did not reference, make mention of, or dispute the matter of the statement on confirmation of debt.

The landlord also submitted a statement by a third party regarding the tenant's non-payment of rent. However, given that the third party did not attend the hearing to confirm the veracity of the statement, and since there is no notarization attached to the statement, I am unable to give evidentiary weight to this statement.

The tenant testified that "the bottom line is I've always paid him his rent." The tenant used to work for the landlord and said that the landlord would deduct the rent from his paycheck. When he was not working for the landlord then he would pay the landlord \$1,500.00 in cash. The tenant reiterated on several occasions that he "always paid" the rent.

The tenant provided no documentary evidence, such as a paycheck stub, that reflected any deductions from his income for rent. A copy of one pay stub, dated April 16, 2020, was submitted by the landlord, and the pay stub did not reference any deduction for rent. In addition, in reference to the tenant paying cash on some occasions, he provided no copies of any receipt for such rent payments.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a notice to end a tenancy, the onus falls on the landlord to prove, on a balance of probabilities, the ground on which a notice to end a tenancy was issued.

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 the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to not pay the rent.

Section 46(1) of the Act states that a landlord

may end a tenancy if rent is unpaid on any day after 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.

In this dispute, the landlord gave the Notice on July 20, 2020 for rent arrears of \$16,500.00 that were due on January 1, 2020.

Section 55(1) of the Act states that

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.

The landlord testified, and provided documentary evidence to support their submission, that the tenant did not pay rent for almost the entire year of 2019. While unsigned, the statement regarding a debt obligation for rent is evidence of the non-payment of rent.

The tenant did not dispute or make mention of the statement of debt.

The tenant testified that he “always paid him his rent” but provided no supporting evidence of such payments. He testified that he paid cash when he was not working for the landlord, but he provided no copies of any receipts for such rent payments. He also testified that the landlord deducted rent from his paycheques. A copy of one of those paycheques clearly indicates otherwise and is contradictory to the tenant’s claim that there were any such deductions.

In short, because of the lack of evidence and the contradictory nature of the tenant’s testimony, I do not accept the tenant’s argument that he paid rent.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground on which the Notice was issued.

As such, I dismiss the tenant’s application for an order to cancel the Notice. The Notice is hereby upheld.

Section 55(1) of the Act states that

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.

Here, having reviewed the Notice and finding that it complies with section 52 of the Act, and, having dismissed the tenant’s application and upholding the landlord’s Notice, I therefore grant to the landlord an order of possession of the rental unit.

An order of possession of the rental unit is issued to the landlord in conjunction with this decision.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant the landlord an order of possession, which must be served on the tenant and which is effective five (5) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: September 4, 2020

Residential Tenancy Branch