



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 22, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a 10 Day Notice for unpaid rent or utilities (the "10 Day Notice") dated September 18, 2020; and
- an order granting the return of the filing fee.

The hearing was scheduled for 11:00 A.M. on November 20, 2020 as a teleconference hearing. Only the Landlord attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 15 minutes before the call ended. 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 Landlord and I were the only persons who had called into this teleconference.

Preliminary Matters

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlord and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 11:00 A.M. on November 20, 2020.

Rule 7.3 of the Rules of Procedure states that if a party fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. As neither the Tenant nor a representative acting on his behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenant's Application, I therefore dismiss the Tenant's Application in its entirety without leave to reapply.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*. Having made the above finding, I will now turn my mind to whether the Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The Landlord testified that the tenancy began on October 15, 2017. The Tenant is required to pay rent in the amount of \$1,700.00 to the Landlord which is due on the 15th day of each month. The Landlord stated that the Tenant paid a security deposit in the amount of \$1,700.00 which the Landlord continues to hold. The Landlord stated that the Tenant continues to occupy the rental unit. The Landlord provided a copy of the tenancy agreement in support.

The Landlord stated that the Tenant only paid rent in the amount of \$700.00 to the Landlord beginning in February 2020 until September 2020. The Landlord stated that he subsequently served the Tenant with a 10 Day Notice dated September 18, 2020 with an effective date of September 29, 2020, by posting it to the Tenant's door on

September 19, 2020. The Landlord provided a proof of service and well as several pictures in support.

The Landlord stated that the Tenant paid the Landlord \$700.00 on September 21, 2020, however, failed to pay the remaining balance of rent owed to the Landlord. The Landlord stated that the Tenant did not pay any rent to the Landlord in October and November 2020. The Landlord stated that the Tenant currently owes \$10,100.00 to the Landlord in unpaid rent. As such, the Landlord is seeking an Order of Possession based on the 10 Day Notice.

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

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.

The Landlord testified that he served the Tenant with the 10 Day Notice dated September 18, 2020 with an effective vacancy date of September 29, 2020, by posting it to the Tenant's door on September 19, 2020. After receiving the 10 Day Notice, the Tenant made an Application to cancel the 10 Day Notice on September 22, 2020. As no one attended the hearing for the Tenant, their Application to cancel the 10 Day Notice is dismissed without leave to reapply. Furthermore, I find that the Tenant has not paid the outstanding rent owed to the Landlord.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the

requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. This order should be served onto the Tenant as soon as possible. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenant did not appear at the time of the hearing; therefore, their Application seeking the cancellation of the 10 Day Notice is dismissed without leave to reapply.

The Tenant has failed to pay rent and has breached the *Act* and the tenancy agreement. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. If the Tenant fails to comply with the order of possession it 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 by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 20, 2020

Residential Tenancy Branch