



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code: CNR

Introduction

The tenant sought an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent ("Notice"), pursuant to section 46 of the *Residential Tenancy Act* ("Act"). It should be noted that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy, the arbitrator must consider if the landlord is entitled to an order of possession if the application is dismissed.

The tenant filed an application for dispute resolution on September 7, 2020 and an arbitration hearing was held, by teleconference, on November 9, 2020. Both parties were sent a Notice of Dispute Resolution Proceeding to their emails by the Residential Tenancy Branch ("RTB"). In addition, file notes indicate that RTB staff telephoned the tenant on September 25, 2020, notifying them of the hearing date and time. Given the above, I find that the tenant was served with the Notice of Dispute Resolution Proceeding and was fully aware of today's hearing. However, he did not attend.

Only the landlord's agent ("landlord") attended the hearing and I gave him a full opportunity to be heard, present testimony, make submissions, and call witnesses.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If no, is the landlord entitled to an order of possession?

Background and Evidence

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. Only relevant evidence necessary to explain my decision is reproduced below.

The tenancy began on August 1, 2017 and monthly rent is \$1,374.14. The tenant paid a security deposit of \$650.00. A copy of a written tenancy agreement was submitted into evidence. Along with that, a copy of the landlord's rent ledger for the tenant, a copy of a repayment plan, and a copy of the Notice were all submitted into evidence.

The Notice was served on the tenant in-person on September 2, 2020 by an agent ("M.R.") of the landlord. The Notice indicated that rent in the amount of \$1,374.14 was due on September 1, 2020.

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 is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

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 deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if they paid rent within five days of service. The Notice also explains that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. (Which he did.)

The landlord testified, and provided documentary evidence to support their submission, that the tenant did not pay rent when it was due, and currently owes rent arrears. There is no evidence before me that the tenant had a right under the Act to not pay the rent.

Taking into consideration all the undisputed 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.

Given the above, I find that the Notice is effective, and I dismiss the tenant's application.

Section 55(1) of the Act states following:

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.

Section 52 of the Act is about the form and content of a notice to end tenancy, and it reads as follows:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

In this dispute, I have reviewed the Notice and find that it complies with section 52 of the Act. Further, as the tenant failed to attend the hearing, I dismiss their application to cancel the Notice.

Having dismissed the tenant's application, I grant the landlord an order of possession pursuant to section 55(1) of the Act. This order is issued in conjunction with this decision, and the order shall be effective two (2) days from the date that it is served on the tenant.

Conclusion

I HEREBY:

- 1. dismiss the tenant's application without leave to reapply.**
- 2. grant the landlord an order of possession, which must be served on the tenant and which is effective two (2) 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 final and binding and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: November 9, 2020

Residential Tenancy Branch