



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 88 WEST REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR, FF

Introduction

This hearing dealt with an application by the tenant pursuant to sections 46 and 72 of the *Residential Tenancy Act*. The tenant applied for an order to set aside a notice to end tenancy for nonpayment of rent and for the recovery of the filing fee.

Representatives of 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 tenant was represented by Legal Counsel. The corporate landlord was represented by their 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*.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began in June 2020. The monthly rent is \$2,800.00 payable on the first of each month. On October 05, 2020 the landlord served the tenant with a 10-day notice to end tenancy for non-payment of rent in the amount of \$2,800.00. The tenant disputed the notice in a timely manner. The tenant paid partial rent and continued to occupy the rental unit without catching up on rent. The landlord served the tenant with notices to end tenancy on November 03, 2020 and December 02, 2020.

The tenant agreed that at the time of the hearing, the tenant owed rent in the amount of \$6,050.00. The landlord stated that outstanding rent was \$6,100.00. The landlord requested an order of possession effective January 08, 2021.

Analysis

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy for unpaid rent, on October 05, 2020 and applied to dispute the notice within the legislated time frame of five days. Even though the tenant made application to dispute the notice to end tenancy within five days, I must uphold the notice because the tenant did not pay rent 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 January 08, 2021. 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 three notices to end tenancy that comply 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 on October 05, 2020 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.

Since the tenant has not proven his case, he must bear the cost of filing his application.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective by **1:00pm on January 08, 2021**.

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: December 21, 2020

Residential Tenancy Branch