



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EMERGE REALTY CORP and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC

Introduction

The tenant sought relief under section 46 of the *Residential Tenancy Act* (“Act”), namely, for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (“Notice”). In addition, he sought an order under section 62 of the Act for an order that the landlord comply with the Act, the regulations, or the tenancy agreement.

The tenant filed an application for dispute resolution on October 10, 2020 and a hearing was held on December 22, 2020. The landlord’s agent (the “landlord”) attended the hearing and was given a full opportunity to be heard, present testimony, and make submissions. The tenant did not attend the hearing, which concluded at 11:10 AM. The landlord confirmed that he provided copies of his documentary evidence on the tenant.

Issues

1. Is the tenant entitled to an order to cancel the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to an order under section 62 of the Act?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy in this dispute began on December 15, 2015. Monthly rent is \$1,300.00, which is due on the first of the month. In addition, the tenant is to pay \$45.00 for a parking stall. The tenant paid a security deposit of \$647.50 and a pet damage deposit of \$647.50. A copy of the written tenancy agreement was submitted into evidence.

The landlord gave evidence that he served, by posting on the door of the rental unit, on October 8, 2020, the three-page Notice. The Notice, a copy of which was submitted into evidence, indicated that the tenant owes rent arrears of \$2,690.00 as of October 1, 2020. This included unpaid rent for September and for October and includes \$45.00 for each of the two months for the parking stall. Also, in evidence was a copy of a document from the landlord showing the tenant's NSF cheques for unpaid rent.

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.

1. Tenant's Application to Dispute the Notice

Where a tenant applies to dispute a 10 Day Notice to End Tenancy for Unpaid Rent, the onus is on the landlord to prove, on a balance of probabilities, that the tenant did not pay rent or utilities in accordance with the tenancy agreement and the Act.

Section 26(1) of the Act states that a tenant "must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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."

If a tenant does not pay rent when it is due under the tenancy agreement, then section 46(1) of the Act permits a landlord to "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."

A tenant must then, within 5 days of receiving this notice, either pay the overdue rent or dispute the notice by making an application for dispute resolution. Here, the tenant disputed the Notice.

In this dispute, the landlord gave evidence that the tenant did not pay rent in the amount of \$1,345.00 that was due on October 1, 2020, as was required by the tenancy agreement. As a result, the landlord gave notice to end the tenancy.

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.

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 that the tenant did not pay rent in accordance with the tenancy agreement and the Act. Further, there is no evidence before me to find that the tenant had a right under the Act to deduct all or a portion of the rent. Finally, having carefully reviewed the Notice, I find that the Notice complies with section 52 of the Act and, based on the landlord's evidence, I must dismiss the tenant's application and uphold the landlord's Notice.

Therefore, pursuant to section 55(1) of the Act, I grant to the landlord an order of possession of the rental unit. A copy of this order is issued in conjunction with this decision to the landlord.

2. Tenant's Application for a Section 62 Order

As the tenant did not attend the hearing to present any evidence, testimony, or make submissions in respect of this aspect of his application, he has not proven on a balance of probabilities that he is entitled to an order under section 62 of the Act. As such, I dismiss this portion of his application without leave to reapply.

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 two 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 by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: December 22, 2020

Residential Tenancy Branch