



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on October 13, 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 October 11, 2020.
- an order that the Landlord comply with the Act, tenancy agreement, or regulations; and
- an order to restrict or suspend the Landlord's right to enter.

The hearing was scheduled for 9:30 A.M. on January 5, 2021 as a teleconference hearing. Only the Landlords attended the hearing at the appointed date and time. No one appeared for the Tenants. The conference call line remained open and was monitored for 11 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 Landlords 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 Landlords 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 9:30 A.M. on January 5, 2021.

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 no one attended the hearing for the Tenant 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 Landlords are entitled to an Order of Possession pursuant to section 55 of the *Act*.

The Landlords were 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. Are the Landlords entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The Landlords testified that the tenancy began on December 1, 2019. The Tenant is required to pay rent in the amount of \$1,500.00 which is due to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$750.00 which the Landlords continue to hold. The Landlords stated that the Tenant continues to occupy the rental unit; therefore, the Landlords are seeking an order of possession.

The Landlords testified the Tenant did not pay rent when due for October 2020. The Landlords stated that they subsequently served the Tenant with a 10 Day Notice dated October 11, 2020 by posting it to the Tenant's door on October 11, 2020. The Landlords testified that the 10 Day Notice indicates that the Tenant failed to pay rent in the amount of \$1,500.00 to the Landlord which was due on October 1, 2020.

The Landlords stated that after serving the 10 Day Notice to the Tenant, the Tenant paid the Landlords \$1,000.00 on October 21, 2020 and a further \$350.00 on October 29, 2020. The Landlords stated that the Tenant still owes \$150.00 for October 2020 rent and that the Tenant has not paid any rent to the Landlords for November, December 2020, and January 2021. As such, the Landlords are seeking to end the tenancy. As previously noted, no one attended the hearing for the Tenant to dispute the Landlords' claims.

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 Landlords testified that they served the Tenant with a the 10 Day Notice dated October 11, 2020 by posting it to the Tenant's door on October 11, 2020. After receiving the 10 Day Notice, the Tenant made an Application to cancel the 10 Day Notice on October 13, 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 full amount of outstanding rent owed to the Landlords as indicated on the 10 Day Notice.

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 Landlords are 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: January 05, 2021

Residential Tenancy Branch