



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on January 7, 2021. The Tenant applied to cancel a 10 Day Notice to End Tenancy (the Notice), pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided testimony. The Landlord acknowledged receipt of the Tenant's application package and evidence. The Landlord did not submit any documentary evidence for this hearing.

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.

Issues(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties agree that current rent is \$1,800.00 and is due on the first of the month. The Landlord issued the Notice because there was \$2,900.00 in unpaid rent, as of October 1, 2020. The Tenant acknowledged receiving the Notice on October 7, 2020. A second copy of the same notice was issued the following day to correct the incorrect effective date on the Notice.

The Landlord stated that the Tenant has had difficulty paying rent since she lost her job to due COVID-19. The Landlord noted stated that he is still owed rent from July and August 2020. However, he acknowledged that since that is considered “affected rent”, he did not include any of those amounts, or the amounts from the repayment agreement in this Notice.

More specifically, the Landlord stated that the Tenant only paid \$700.00 in rent for September 2020, and did not pay any rent for October 2020. Consequently, the Landlord issued this Notice due to the non-payment of September and October rent, which amounted to \$1,100.00 outstanding from September and \$1,800.00 outstanding from October (totalling \$2,900.00, as laid out on the Notice). The Landlord also pointed out that the Tenant has also failed to pay November or December 2020 rent.

The Tenant does not dispute that she lost her job, and that she has failed to pay a substantial amount of rent since the summer time. The Tenant acknowledged getting a repayment plan for the affected rent, and stated she has been doing the best she can to find a job and pay her rent. The Tenant stated that she has recently found a job, and is in a better position to start paying rent, starting this month. The Tenant acknowledges that she only paid \$700 in rent for September, and no rent for October, November, or December 2020.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I make the following findings:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution.

First, I find it important to note that this Notice was issued due to non-payment of rent, and not for non-payment of “affected rent”. This is an important distinction, because non-payment of affected rent has materially different considerations. “Affected rent” is rent that became due between March 18, 2020, until August 17, 2020, due to the

COVID-19 pandemic. As this Notice only included rent that had accrued after that time, the Landlord was not required to issue a repayment plan, prior to issuing the Notice.

I turn to the Notice, which the Tenant acknowledged receiving on October 7, 2020. This Notice indicated that \$2,900.00 was still unpaid for September and October 2020. The Tenant provided no evidence that she had any agreement in writing with the Landlord that this amount was not due, or that she had any legal basis to withhold this rent amount. The Tenant does not refute that these amounts were not paid.

After receiving the Notice on October 7, 2020, the Tenant had 5 days to pay rent in full or file an application for dispute resolution (with a valid reason as to why rent is not owed). There is no evidence that the Tenant paid this amount in full, or that she had the right to withhold this amount. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. I hereby dismiss the Tenant's application to cancel the Notice.

As the Tenant's Application is dismissed, I must now consider if the Landlord is entitled to an Order of Possession pursuant to sections 55 of the *Act*. 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, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice issued by the Landlord on October 7, 2020, meets the requirements for form and content and the Landlord is entitled to an order of possession. The Order of Possession will be effective 2 days after it is served on the Tenant.

Since the Tenant was not successful with her application, I decline to award the recovery of the filing fee.

Conclusion

The Tenant's application is dismissed, in full, without leave to reapply.

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this

order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 07, 2021

Residential Tenancy Branch