



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. A hearing by telephone conference was held on February 1, 2021. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the *Act*):

- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice).

The Landlord and the Tenant attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant's application and evidence, and did not take issue with the service of those documents. The Landlord did not submit any documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

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

Background and Evidence

Both parties agree that monthly rent is set at \$3,750.00 and is due on the first of the month. The Landlord currently holds a security and pet deposit, totalling \$3,750.00.

The Landlord explained that the Tenant has failed to pay rent for 10 out of the last 11 months. More specifically, the Landlord stated that no rent has been paid for April, May, June, July, August, October, November, and December of 2020, as well as January and February of 2021. The Landlord is aware that the rent that accrued from April- August of last year is considered “Affected rent” and must be handled differently than the rent due before or after that period.

The Landlord issued this Notice on November 5, 2020, for \$7,500.00 in unpaid rent (October and November 2020). This amount is separate from the unpaid affected rent, which is also still owing. A copy of the Notice was provided into evidence.

The Tenant does not dispute any of the above amounts, and agrees he owes several month’s rent at this point. The Tenant wanted to work with the Landlord and try and extend the tenancy until he can regain his footing. The Landlord stated she cannot afford to offer any more time for the tenant to pay, nor can she afford to let the tenancy continue.

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.

Based on the undisputed evidence and testimony, I find the Tenant owed \$7,500.00 in unpaid rent at the time the Notice was issued. Although there was also unpaid affected rent, this was not included in the Notice. The Tenant agrees he owed that amount, at the time the Notice was issued, and acknowledged that he did not pay any amounts since receiving the Notice.

After receiving the Notice on November 5, 2020, the Tenant had 5 days to pay the \$7,500.00 worth of rent in full or file an application for dispute resolution, along with a valid reason why rent is not due. There is no evidence that the Tenant paid this amount in full, or that they had the right to withhold this amount. Given the Tenant I hereby dismiss the Tenants' application to cancel the first 10 Day Notice.

As rent has not been paid when due, and there is insufficient evidence before me that the Tenant had a right under the *Act* to deduct all or a portion of rent, I find that the Tenant's Application is dismissed. When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. Having reviewed the 10 Day Notice, I find it complied with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

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: February 01, 2021

Residential Tenancy Branch