



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (“Notice”) pursuant to section 46 of the *Residential Tenancy Act* (“Act”). They also sought reimbursement of the filing fee under section 72 of the Act.

At the hearing on March 4, 2021, which commenced at 9:30 AM and which was held by teleconference, only the landlord and a family member attended. The tenant did not attend the hearing, which ended at 9:46 AM.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession of the rental unit?
3. Is the tenant entitled to compensation for the cost of the filing fee?

Background and Evidence

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

The tenancy began in late 2009 and monthly rent, which is due on the first of the month, is \$600.00. The tenant paid a security deposit of \$300.00. There is no written tenancy agreement in evidence.

On December 10, 2020, the landlord served the tenant with the Notice for unpaid rent in the amount of \$3,600.00 that was due and in arrears as of December 1, 2020. A copy of the Notice was in evidence, along with photographs of the Notice having been attached to the tenant’s door of the rental unit.

Analysis

Section 26 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.

Section 46(1) of the Act states that

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.

And, a notice must comply with section 52 of the Act. (Form and content of the notice.)

Section 46(4) of the Act requires a tenant who has received a notice under section 46(1) to either, within 5 after receiving the notice, (a) pay the overdue rent, or (b) dispute the notice by making an application for dispute resolution.

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.

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

In this dispute, the landlord's undisputed evidence persuades me to find that the tenant did not and has not paid rent as required by the tenancy agreement. Further, having reviewed the Notice, I find that the Notice complies with section 52 of the Act.

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 and I therefore uphold the Notice. The tenant's application is dismissed, in its entirety, without leave to reapply.

Pursuant to section 55(1) of the Act I grant the landlord an order of possession of the rental unit. The order, which is issued in conjunction with this Decision to the landlord, must be served on the tenant.

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 is effective two (2) 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, except where permitted by the Act, and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: March 4, 2021

Residential Tenancy Branch