



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lotus Land Estates
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RP, OPR, MNRL, FFL

Introduction

The tenant applied for an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to section 46 of the *Residential Tenancy Act* ("Act"), and for an order for repairs pursuant to sections 32 and 62 of the Act.

The landlord applied for an order of possession pursuant to sections 46 and 55 the *Residential Tenancy Act* ("Act"). They also seek a monetary order for unpaid rent and to recover the cost of the application filing fee, pursuant to sections 67 and 72 of the Act.

Both parties attended the hearing on April 12, 2021, which began at 11:00 AM, and which was held by teleconference. At approximately one to two minutes into the hearing, the tenant was disconnected from the hearing. They dialed into the hearing after a few minutes had elapsed, provided their name, and then was again disconnected. The tenant did not reconnect at any point after this second disconnection, and the hearing concluded at 11:14 AM.

It should be noted that neither I, nor the landlord's agent, experienced any teleconference technical issues for the duration of the hearing.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. Is the tenant entitled to an order for repairs?
3. Is the landlord entitled to an order of possession?
4. Is the landlord entitled to a monetary order for unpaid rent?
5. Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The landlord's agent (the "landlord") testified that the tenancy began with a previous landlord about three or four year earlier than when they purchased the property. They renewed the tenancy and a new written tenancy agreement was signed in June 2020. A copy of this tenancy agreement was in evidence.

Monthly rent, which is due on the first of the month, is \$1,200.00. There is indicated a security deposit in the amount of \$500.00, but the landlord explained that this deposit was never transferred to them by the previous landlord.

On January 7, 2021, the landlord, after not hearing anything from the tenant in respect of arrears that had been slowly accumulating, issued the Notice. A copy of the Notice is in evidence and it indicates that as of January 1, 2021, the tenant owed \$8,400.00.

The landlord testified that as of April 1, 2021, the tenant has not paid any rent for ten months, and arrears now stand at \$12,000.00. While the landlord explained that they are not unsympathetic to difficulties that the tenant might be having in paying rent, they are at a loss as to what else to do.

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. Thus, the tenant's application is dismissed without leave to reapply, and I grant the landlord's application for an order of possession.

Pursuant to section 55(1) of the Act, then, 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.

The order of possession will go into effect two days from the date of service.

Section 67 of the Act states that "if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party."

In respect of the claim for compensation for unpaid rent, I find that, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, the landlord has met the onus of proving their claim for compensation in the amount of \$12,000.00. Pursuant to section 67 of the Act, I hereby order that the tenant pay to the landlord \$12,000.00 for unpaid rent.

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recover the cost of the filing fee. As the landlord was successful, I grant their claim for the \$100.00 filing fee.

A monetary order in the amount of \$12,100.00 is issued, in conjunction with this Decision. The landlord must serve a copy of this monetary order on the tenant in order for the order to be enforceable in court.

Conclusion

I dismiss the tenant's application.

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.

I grant the landlord a monetary order in the amount of \$12,100.00, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia.

This decision is final and binding and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: April 12, 2021

Residential Tenancy Branch