



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on February 27, 2021 (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 February 23, 2021; and
- an order that the Landlord comply with the *Act*.

The hearing was scheduled for 9:30 A.M. on June 7, 2021 as a teleconference hearing. K.N. and R.B. appeared on behalf of the Landlord at the appointed date and time. No one appeared for the Tenant. 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 the Landlord's Agents 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 Landlord's Agents 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 June 7, 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 Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*.

The Landlord's Agents 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. Is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The Landlord's Agents testified that the tenancy began on November 1, 2020. The Landlord's Agents stated that the Tenant is required to pay rent in the amount of \$1,150.00 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$575.00 which the Landlord continues to hold.

The Landlord's Agents testified the Tenant did not pay the full amount of rent when due for December 2020 and paid no rent for January and February 2021. The Landlord's Agents stated that they subsequently served the Tenant in person with the 10 Day Notice on February 23, 2021 with an effective vacancy date of March 5, 2021. The Landlord's Agents testified that the 10 Day Notice indicates that the Tenant failed to pay rent in the amount of \$2,550.00 to the Landlord which was due on February 1, 2021.

The Landlord's Agents stated that the Tenant has not paid any amount toward the outstanding balance of rent as indicated on the 10 Day Notice. Furthermore, the Landlord's Agents stated that the Tenant has also failed to pay rent for March, April,

May and June 2021. The Landlord's Agents stated that the Tenant currently has an outstanding balance of rent owed to the Landlord in the amount of \$8,300.00. The Landlord is seeking an order of possession based on the 10 Day Notice.

Analysis

Based on the unchallenged 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.

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 outstanding rent owed to the Landlord.

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 Tenant.

Conclusion

The Tenant did not appear at the time of the hearing; therefore, their Application is dismissed without leave to reapply.

The Tenant has failed to pay rent and have breached the *Act* and the tenancy agreement. The Landlord is 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: June 07, 2021

Residential Tenancy Branch