



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR LRE LAT FFT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 28, 2021 (10 Day Notice), for an order to suspend or set conditions on the landlord's right to enter the rental unit, site or property, for authorization to change the locks to the rental unit, and to recover the cost of the filing fee.

An agent for the landlord, CN (agent) and the former landlord, BF (BF) attended the teleconference hearing. The agent and BF were affirmed. Once BF confirmed they were no longer representing the landlord, BF disconnected from the hearing. The hearing was held by telephone conference call and began at 9:32 a.m., Pacific Time, on this date, January 14, 2022. The line remained open while the phone system was monitored for 25 minutes and the only participants who called into the hearing during this time was the agent and BF. As the applicant tenant did not attend the hearing and after the 10-minute waiting period at 9:42 a.m. Pacific Time, the tenant's application was **dismissed without leave to reapply**.

I have reviewed the Notice of Dispute Resolution Proceeding dated September 15, 2021 (Notice of Hearing) and have confirmed that the correct date and time of the hearing are listed. In addition, I have confirmed that the correct access codes were provided to both parties.

Given the above, the hearing continued without the tenant present in accordance with Rule 7.1 and Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), which address consequences for not attending a dispute resolution hearing.

Preliminary and Procedural Matters

The agent and BF were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The agent and BF were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the agent and BF were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The agent and BF had no questions about my direction pursuant to RTB Rule 6.11.

In addition, pursuant to section 64(3)(c) of the Act, I have amended the application to replace the respondent BF, with the agent, CN. The agent confirmed their email address during the hearing.

Background and Evidence

The agent confirmed that they were not aware of how much was owing to the landlord due to BF allegedly taking rent payments and not given those to the landlord.

As a result, the agent was advised that I could not grant an order of possession as the agent was unable to confirm that the 10 Day Notice was accurate, nor did I have a copy of the 10 Day Notice before me.

The agent testified that the tenant is currently in custody due to criminal matters. The agent asked about an application to end the tenancy early for health or safety reasons and as a result, the agent was informed about section 56 of the Act and the "ET" (early end of tenancy for health or safety reasons) process. The agent stated that they will apply for an ET as a result.

Analysis

Based on the undisputed documentary evidence and the unopposed testimony provided during the hearing, and on the balance of probabilities, I find the following.

I accept the testimony of the agent that the 10 Day Notice contained information about an amount owing that the agent could not confirm as accurate during the hearing. As a result of having no 10 Day Notice before me, and considering the testimony of the agent, I do not grant an order of possession as I am not satisfied that the amount listed as owing is correct and was known at the time of the hearing.

As the tenant's application was dismissed, the filing fee is not granted.

The agent is at liberty to apply for an ET under section 56 of the Act.

Conclusion

The tenant's application is dismissed as the tenant failed to attend the hearing as scheduled.

I do not grant an order of possession as I am not satisfied that the 10 Day Notice was valid and contained a correct amount of rent owing, nor do I have a copy of the 10 Day Notice before me.

The filing fee is not granted.

This decision will be emailed to both parties.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 14, 2022

Residential Tenancy Branch