



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR FF / CNR MNR LRE RR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- authorization to change the locks and/or to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:42 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m.. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord’s counsel referred to an affidavit of service submitted as evidence which states that on April 14, 2022, a copy of the Application for Dispute Resolution and Notice of Hearing was posted to the door of the rental unit.

Based on the above evidence, I am satisfied that the tenants were deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. Additionally, as this hearing was initially scheduled in response to the tenant's own application, the tenant ought to have been aware of the hearing date and time.

As the tenant failed to participate in this hearing, the tenant's application is dismissed in its entirety without leave to reapply. The hearing into the landlord's application proceeded in the absence of the tenant.

The landlord advised he was not seeking any monetary award for unpaid rent, only an order of possession. The request to recover the filing fee was also withdrawn in the hearing.

Issues

Is the landlord entitled to an order of possession for unpaid rent?

Background and Evidence

The tenancy began approximately 10 years ago. The tenant is the landlord's son and his girlfriend. The monthly rent is \$1000.00 payable on the 1st day of each month.

The landlord submitted a copy of a 10 Day Notice dated March 9, 2022. The 10 Day Notice indicates an outstanding rent amount of \$1000.00 which was due on March 1, 2021. The 10 Day Notice provides that the tenant had five days from the date of service to pay the outstanding rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice, March 31, 2021. The landlord confirmed in the hearing that the due date and effective date on the 10 Day Notice contained a typo as the year should have been 2022 not 2021.

The 10 Day Notice was served on the tenants on March 10, 2022 by posting copies to the door of the rental premises. A witnessed proof of service of the 10 Day Notice was submitted as evidence.

The landlord testified the outstanding rent was not paid within 5 days and no rent has been paid for several months.

Analysis

I am satisfied that the tenant was deemed served with the 10 Day Notice on March 13, 2022, three days after its posting, pursuant to sections 88 & 90 of the Act.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 26 of the Act requires 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 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*. I find the due date and effective date of the 10 Day Notice were just typos and I am satisfied the tenants ought to have known the same; therefore, pursuant to section 68 of the Act, the 10 Day Notice is amended to reflect to the correct dates of March 1, 2022, and March 31, 2022, respectively.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order; this Order may be filed 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: July 07, 2022

Residential Tenancy Branch