



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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.

Tenant:

- cancellation of the landlord's 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- more time to make an application to cancel the landlord's One Month Notice pursuant to section 66.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence.

Both parties denied being served with the respective applications. Neither party submitted any evidence in support of service. As the result in this case would be the same, regardless of service, I make no finding on the service of either application.

Issues

Is the landlord entitled to an order of possession for unpaid rent or should the 10 Day Notice be cancelled?

Background and Evidence

The tenancy began approximately 4 years ago. The monthly rent is \$850.00. The rental unit is a modular home on the landlord's property. The modular home is owned by the landlord.

The landlord submitted a copy of a 10 Day Notice dated June 23, 2022. The 10 Day Notice indicates the tenant failed to pay rent in the amount of \$4800.00 which was due on January 1, 2022. 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.

The landlord testified the outstanding rent was not paid within 5 days and that the tenant has only made one rent payment of \$900.00 in this year. The landlord testified the tenant owes way more than was listed on the 10 Day Notice and they just stated the amount that was owing as of January 1, 2022 even though the Notice was issued in June 2022. The landlord testified that the tenant was his friend and that he just got involved heavily into drugs. The landlord submits that he has a signed agreement form the tenant stating he owes at least \$8,000.00 over the years. The landlord agreed that as he has not filed his own application to recover the unpaid rent and that the 10 Day Notice did not include the full amount outstanding, the landlord could just make a separate application to deal with the outstanding rent. The landlord's main concern was getting possession of the property.

The tenant acknowledged service of the 10 Day Notice and that he did not pay the full amount of the arrears indicated, within five days, of receiving the Notice. The tenant did not dispute that he was in rent arrears he just disputed the amount.

Analysis

I am satisfied that the tenant was served with the 10 Day Notice on June 23, 2022.

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.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application must be dismissed as the tenant acknowledged outstanding rent was not paid in full within 5 days after receiving the notice nor did the tenant have 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 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: August 25, 2022

Residential Tenancy Branch