



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;
- a monetary order for unpaid rent pursuant to section 67;
- 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).

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. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

Issues

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

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began on October 1, 2020. The current monthly rent is \$1500.00 payable on the 1st day of each month. The tenant paid a security deposit of \$750.00 at the start of the tenancy which the landlord continues to hold.

The parties had a previous dispute resolution hearing in which a settlement was reached whereas the tenant was required to make a lump sum payment and then make \$2000.00 monthly payments towards the rent arrears. The landlord was granted a monetary order in the amount of \$7500.00.

The landlord submitted a copy of a 10 Day Notice dated May 4, 2022. The 10 Day Notice indicates the tenant failed to pay rent in the amount of \$11,010.00 which was due on May 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 that on he served the tenant with the 10 Day Notice by posting a copy to the door of the rental premises. A witnessed proof of service of the 10 Day Notice was provided with the application.

The landlord testified the outstanding rent was not paid within 5 days and no rent has been paid by the tenant since.

The tenant acknowledged receipt of the 10 Day Notice on May 4, 2022 and that he did not pay the full amount of the arrears indicated, within five days, of receiving the Notice. The tenant acknowledged he withheld rent payments due to issues with rats and the fridge in the rental unit. The tenant testified that he tried to make rent payments at the end of May 2022 but the landlord would not accept them. The tenant testified that as per the previous settlement he was supposed to make a lump sum payment of \$4450.00 in March 2022 and instead he paid \$8450.00 in April 2022.

The landlord replied that any payment made by the tenant was for previous arrears and at that time the tenant still owed approximately \$18,000. The landlord testified the tenant only made the lump sum payment as required in the settlement decision and made no other monthly payments after. The landlord claims \$18,014.72 in rent is outstanding to date.

The acknowledged rent was outstanding, but he disputed the amount as calculated by the landlord.

Analysis

I am satisfied that the tenant was served with the 10 Day Notice on May 4, 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 tenants application must be dismissed as the tenant acknowledged 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. Further, I find the tenant did not comply with the settlement payment plan reached in the previous hearing.

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.

There was no dispute that the tenant is in rent arrears for a significant amount of rent. However, there was a dispute as to the amount outstanding. I find the landlord submitted insufficient evidence for me to be able to accurately issue a monetary order to the landlord. The landlord did not submit any tenant ledger documents which would reflect the outstanding balance and any previous payments made by the tenant. The landlord's application for a monetary order for unpaid rent is therefore dismissed with leave to reapply. The landlord should properly account for the outstanding amount including any previous monetary award granted to the landlord.

As the landlord was still partly successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application. The landlord may deduct this amount from the tenant's security deposit.

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: September 16, 2022

Residential Tenancy Branch