



Dispute Resolution Services

Page: 1

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).

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 11:15 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord representatives attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord’s agent A.N. testified that at 12:52 p.m. on September 15, 2022, she served the tenant with a copy of the Application for Dispute Resolution and Notice of Hearing by attaching it to the door of the rental unit. A.N. testified that this was witnessed by the building maintenance person.

Based on the above evidence, I am satisfied that the tenant was 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.

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 for this supportive housing unit began on September 5, 2019. The monthly subsidized rent is \$375.00 payable on the 1st day of each month.

The landlord submitted a copy of a 10 Day Notice dated August 12, 2022. The 10 Day Notice indicates the tenant failed to pay rent in the amount of \$4150.00 which was due on August 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's agent A.N. testified that on August 12, 2022 the tenant was personally served with the 10 Day Notice. A witnessed proof of service of the 10 Day Notice was provided with the application.

The landlord's agent A.N. testified the outstanding rent was not paid within 5 days and no rent has been paid by the tenant since. The landlord was not seeking a monetary order for the unpaid rent and only seeking an order of possession.

Analysis

As the tenant filed an application to dispute the 10 Day Notice, I am satisfied that the tenant was served with the 10 Day Notice on August 12, 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.

I accept the landlord's undisputed testimony and find that the tenant was obligated to pay monthly rent in the amount of \$375.00 but failed to pay the outstanding rent as per the 10 Day Notice within five days of the Notice being received.

The tenant filed to dispute the 10 Day Notice within the time limit permitted under the Act. However, the tenant failed to participate in this hearing and present any evidence to support why the 10 Day Notice should be cancelled. Accordingly, the tenant's application is dismissed in its entirety without leave to reapply. 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: December 08, 2022

Residential Tenancy Branch