



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

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. No issues were raised with respect to the service of the application and evidence submissions on file.

Issues

Should the landlord's 10 Day Notice and One Month Notice be cancelled? If not, is the landlord entitled to an order of possession and a monetary order for unpaid rent?

Background and Evidence

The tenancy began on December 15, 2021 with a monthly rent of \$1350.00 payable on the 1st day of each month. The tenant paid a security deposit of \$675.00 at the start of the tenancy.

The parties agreed that the tenant originally received a 10 Day Notice on October 13, 2022. Neither party submitted a copy of this original 10 Day Notice but during the hearing the parties confirmed that the second page of 10 Day Notice indicated the tenant failed to pay rent in the amount of \$125.00 which was due on October 1, 2022.

On this same date, the landlord also served the tenant with a One Month Notice on the grounds that the tenant was repeatedly late paying rent.

The landlord testified that the tenant did not pay the full amount of the arrears indicated on the original 10 Day Notice within five days of being served and that the full amount is still outstanding. The landlord testified that the tenant has also since failed to pay half of November and December 2022. The landlord testified that one half of the rent is paid directly by the Ministry of Social Development. The landlord testified that a total of \$1475.00 is outstanding as of the hearing date. Subsequent to the tenant's application being filed, the tenant was served with another 10 Day Notice dated December 7, 2022 which indicates the tenant failed to pay rent in the amount of \$1475.00 which was due December 1, 2022.

The tenant acknowledged the outstanding rent was not paid within 5 days after receiving the 10 Day Notice and that she has not paid her half of the rent for November and December 2022.

Analysis

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 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 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

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 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.

Further, as per section 55(1.1) if the application is in relation to a notice to end tenancy under section 46 [*landlord's notice: non-payment of rent*] an order requiring the payment of the unpaid rent must also be granted.

Although the tenant filed an application for dispute resolution, I find the tenant's application must be dismissed as the tenant acknowledged rent was not paid within 5 days after receiving the 10 Day Notice nor did the tenant have a right under this Act to deduct all or a portion of the rent.

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.

The landlord is granted a monetary award for outstanding rent in the amount of \$1475.00.

The landlord continues to hold a security deposit of \$675.00. Using the offsetting provisions of section 72 of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$800.00.

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.

I grant the landlord a Monetary Order in the amount of \$800.00. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 15, 2022

Residential Tenancy Branch