



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 and utilities 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);
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- 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;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:45 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord and his daughter attended the hearing and were given a full opportunity to provide testimony, to present evidence and to make submissions.

The landlord’s agent testified that on November 18, 2022, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. The landlord submitted a registered mail receipt and tracking number in support of service.

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.

Preliminary Issue – Amendment to Landlord's Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord's agent testified that the tenant had not yet vacated the rental unit and therefore asked to amend the claim to include outstanding rent up to the date of the hearing. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

The landlord's application was also amended to remove the names of other occupants who were not listed as tenants in the tenancy agreement. The landlord confirmed that the only tenant was E.W.

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 and utilities?

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

Background and Evidence

The tenancy began on February 25, 2022 with a monthly rent of \$2750.00 payable on the 1st day of each month. The tenant was also responsible for 50% of utilities.

The landlord submitted a copy of a 10 Day Notice dated October 6, 2022. The 10 Day Notice indicates the tenant failed to pay rent in the amount of \$2750.00 which was due

on October 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 testified that on October 6, 2022 the tenant was personally served with the 10 Day Notice. The landlord's agent testified the outstanding rent was not paid within 5 days and no rent has been paid by the tenant since.

The landlord's amended monetary claim is for outstanding rent in the amount of \$13,750.00 which includes rent for October 2022 through to February 2023. The landlord is also claiming unpaid utilities in the amount of \$915.13 up to the date of the hearing. Copies of utilities bills and a demand letter for payment of the utilities were submitted as evidence.

The tenant failed to attend the hearing. The tenant's own application acknowledges receipt of the 10 Day Notice on October 6, 2022.

Analysis

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 am satisfied that the tenant was personally served with the 10 Day Notice on October 6, 2022. The tenant failed 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*.

I find that the tenant was obligated to pay monthly rent in the amount of \$2750.00 plus 50% of the utilities as per the tenancy agreement. I accept the landlord's undisputed claim for outstanding rent and utilities in the total amount of \$14,665.13.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$14,765.13.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order; this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$14,765.13. Should the tenant 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: February 07, 2023

Residential Tenancy Branch