



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Dispute Codes: CNR, MNDCT, LRE, OLC, OPR-DR, MNR-DR, FFL

Introduction

The Tenant sought various relief under the *Residential Tenancy Act* (the “Act”).

The Landlord seeks an order of possession on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) under section 55(1) of the Act.

The Landlord seeks an order requiring the payment of unpaid rent, pursuant to section 55(1.1) of the Act.

The Tenant was provided with a copy of the Notice of Dispute Resolution Proceeding in person at the Residential Tenancy Branch’s Burnaby office on November 16, 2022. The Tenant confirmed by email on February 16, 2023 to the Residential Tenancy Branch that the hearing was still required. The Tenant did not, however, attend the dispute resolution hearing on March 16, 2023 at 9:30 a.m. The hearing ended at 9:46 a.m.

Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

In reaching this decision, I have considered the Landlord’s oral and documentary evidence and written submissions, and I shall only refer to what is necessary to explain my decision. The Landlord was affirmed before providing any testimony.

The tenancy began on October 1, 2022. One month into the tenancy, the Tenant decided not to pay rent. Rent is \$700 and it is due on the first day of the month. The Tenant paid a security deposit of \$350. The terms of the tenancy are outlined in a written tenancy agreement which was submitted into evidence by the Landlord.

On November 2, 2022, the Landlord served the Notice on the Tenant by posting the Notice on the door of the rental unit. The Notice (a copy is in evidence) indicated, and the Landlord testified about the details, that the Tenant failed to pay rent on November 1, 2022. The Landlord testified that the Tenant has not paid any rent since, and that the Tenant currently has the keys to the rental unit, and they still have access to the property.

The Tenant has, according to the Landlord, converted their bedroom into some sort of storage room, ostensibly to save storage locker costs. There is, it should be noted, another tenant ("Mario") residing in the rental unit; they are not part of this tenancy.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Tenant's Application

The Tenant did not attend the hearing and prove their case. Thus, the Tenant's application is dismissed in its entirety, without leave to reapply.

Landlord's Application

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Landlord's undisputed, affirmed evidence proves on a balance of probabilities that the Tenant did not pay rent on November 1, 2022, and that they have not paid any rent since. There is no evidence before me to find that the Tenant had, or has, any legal right under the Act not to pay the rent. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the Tenant's non-payment of rent.

I further find that the Notice complies with the form and content requirements of section 52 of the Act. As such, the Tenant's application to cancel the Notice is dismissed and the Notice is upheld.

Based on the above findings, the Landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and it must be served by the Landlord on the Tenant. The Tenant has two days to vacate the rental unit from the date of service or from the date of deemed service.

The Landlord may, if necessary, enforce the order of possession in the Supreme Court of British Columbia. If this proves necessary then the Tenant may be further liable for any related court filing fees and bailiff costs, and the Landlord may make another application for dispute resolution to seek such compensation for such costs.

Since the Landlord's application relates to a section 46 notice to end tenancy the Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Thus, the Tenant is ordered to pay \$3,500 to the Landlord.

Under section 38(4)(b) of the Act, the Landlord is authorized and ordered to retain the \$350 security deposit as partial satisfaction of the payment order. A monetary order for the remaining amount (\$3,150) is attached to this Decision and must be served on the Tenant. The monetary order is enforceable in the Provincial Court of British Columbia.

I note that the Landlord originally claimed to recover the cost of the application filing fee. However, the file indicates that the Landlord has since been refunded this amount.

Conclusion

The Tenant's application is dismissed, without leave to reapply.

The Landlord's application is granted. The Landlord is granted an order of possession and a monetary order, as described above.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 16, 2023

Residential Tenancy Branch