



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);
- 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.

The landlord confirmed service of the tenants applications for dispute resolution, including the notice of hearing and evidence on file but stated it was done through e-mail which was not an agreed upon method of service. The tenant testified they originally received the 10 Day Notice from the landlord through e-mail so figured e-mail was agreeable method of service.

The tenant denied receipt of the landlord’s applications for dispute resolution, including the notice of hearing and evidence on file.

Counsel for the landlord submitted that on February 7, 2023 a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenants by registered mail.

The landlord submitted a registered mail receipt and tracking history in support of service. The landlord submits the package was returned as unclaimed.

Based on the above evidence, I find both the landlord and tenants to be deemed served with the respective Applications for Dispute Resolution and evidence submissions pursuant to sections 89 & 90 of the Act.

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 counsel submitted that the tenants had not yet vacated the rental unit and therefore asked to amend the claim to include additional outstanding rent that was payable on February 21, 2023. Although the tenants did not have prior notice of this claim, I find that the tenants should reasonably have known that the landlord would suffer this loss if the tenants neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

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 21, 2022 with a monthly rent of \$3400.00 payable on the 21st day of each month.

The landlord submitted a copy of a 10 Day Notice dated January 23, 2023. The 10 Day Notice indicates the tenant failed to pay rent in the amount of \$6800.00 which was due on January 21, 2023. 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.

Counsel for the landlord submits that on January 26, 2023 the tenant C.N. was personally served with the 10 Day Notice. A proof of service of the 10 Day Notice was provided as evidence. The landlord submits this notice replaced the January 20, 2023

10 Day Notice that was initially served by e-mail and the amount outstanding was changed to reflect the unpaid rent due on January 21, 2023.

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

The landlord's amended monetary claim is for outstanding rent in the amount of \$10,200.00. The landlord testified that this includes unpaid monthly rent of \$3400.00 that was due and payable on December 21, 2022, January 21, 2023 and February 21, 2023.

The tenant acknowledged service of the 10 Day Notice and that they did not pay the full amount of the arrears indicated, within five days, of receiving the Notice. Rather the tenant testified that she was unclear as to the amount outstanding and requested an adjournment at this late stage in the hearing in order to "clarify with the landlord" the amount outstanding.

Counsel for the landlord objected to the adjournment request citing there was no reason to adjourn and that the tenant was well aware of the amount of outstanding rent.

Analysis

The tenant's request for an adjournment was denied. The tenant provided no explanation as to why a further clarification of the rent outstanding was required. I find it would be prejudicial to the landlord to delay this matter further as the landlord was already claiming the tenants to be three months in arrears.

I am satisfied that the tenants were personally served with the 10 Day Notice on January 26, 2023.

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.

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 tenants were obligated to pay monthly rent in the amount of \$3400.00 but failed to pay rent that was due and payable as per the tenancy agreement on December 21, 2022, January 21, 2023 and February 21, 2023. I accept the landlord's amended claim for outstanding rent of \$10,200.00.

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 \$10,300.00.

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.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$10,300.00. Should the tenants 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: March 10, 2023

Residential Tenancy Branch