



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

I Dispute Codes CNR,

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on December 22, 2022.

The landlord appeared. The landlord stated that they served the tenant with their evidence by posting to the door on March 7, 2023. Filed in evidence is a photograph.

As the tenant did not appear at the appointed time 11am the hearing proceed in the absence of the tenant. The tenant called into the hearing at 11:11 am.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on November 12, 2022.. Rent in the amount of \$1,700.00 was payable on the first of each month. A security deposit of \$850.00 was paid by the tenant.

The landlord testified that the tenant paid the security deposit and first months rent and has failed to pay any further rent.

The landlord testified that the tenant did not pay any rent for December 2022, and was served with the Notice on January 18, 2023, by posting to the door. The landlord stated that the outstanding rent of \$1,700.00 was not paid and the tenant has failed to pay all subsequent rent for January, February and March 2023.

The landlord testified that they never locked the tenant out of the rental unit, that it was the tenant who gave their fob to a friend; however, said they would get it back, which they eventually did.

The tenant submits in their application that they have been locked out of my home with no way in, for weeks. I have had to use rent \$ for hotels for 4 different nights when nobody would let me in.

The tenant testified that they have not pay rent for subsequent months because they are still locked out of the premises. The tenant stated that they are currently in the process of packing their belongings and moving them to storage; however, will not vacate in two days and will appeal this decision.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, I accept the landlord evidence that the tenant was served with the Notice of January 18, 2023, and not December 31, 2022, as submitted by the tenant in their application. I find it was more likely was an error on the tenant part because the tenant's application was filed on January 26, 2023.

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*.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent.

In this case, the tenant did not pay the outstanding rent for December 2022, nor has the tenant paid any subsequent rent. While the tenant indicated they did not pay rent because they had been locked out for weeks at the time they made their application; however, I find that highly unlikely and not consistent with their own submission in their application as they indicated they had stay in a hotel for 4 nights, because no one would let them in, this is not weeks.

Further, the tenant sent the landlord a text message on December 13, 2022, indicated they would vacate mid to end of January. "As for rent, now that I'm better I'll have you money within a week tops then it won't happen again." This does not support that the tenant has been locked out the premises for weeks. Clearly this is a willful failure to pay rent when due.

Furthermore, even if the tenant had been locked out temporary, by their own actions of giving their fob to a friend, that is not grounds under the Act to withhold rent. In addition, this is inconsistent with the tenant's text message dated February 7, 2023, stated that the landlord has been quite gracious to them and further states "I meant what I said about paying you when I sell the truck"

Based on the above, I find the tenant breached the Act, when they failed to pay rent. I find the tenancy legally ended based on the Notice and the tenant is overholding the premises. Therefore, I dismiss the tenant's application, I find the landlord is entitled to an order of possession, pursuant to section 55(1) of the Act. I further find the landlord is entitled to a monetary order pursuant to section 55 (1.1) of the Act for the unpaid rent.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I find the landlord is entitled to a monetary order, pursuant to section 55(1.1) for the unpaid rent in the amount of **\$6,800.00**.

Under section 38(4)(b) of the Act, the landlord is ordered to retain the security deposit of \$850.00 as partial satisfaction of the unpaid rent. I grant the landlord a formal monetary

order for the balance due in the amount of **\$5,950.00**. The monetary order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I Caution the tenant should a pattern of failure to pay rent be established. They will be referred to the Compliance and Enforcement Unit and may be subject to administrative penalties.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession and a monetary order for the unpaid rent.

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 13, 2023

Residential Tenancy Branch