



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNDCT, RR, ATT

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

1. cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10-Day Notice), pursuant to sections 46 and 55;
2. a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement, pursuant to section 67;
3. an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to sections 27 and 65; and,
4. an order to allow access to or from the rental unit for the tenant or the tenant’s guests pursuant to sections 30 and 62 of the Act.

YY (the “landlord”) appeared at the hearing. YY was given full opportunity to be heard, to present testimony and to make submissions.

Preliminary Matters

The tenant did not appear at the hearing. As a result, I waited until 9:40 a.m. in order to enable the applicant tenant to connect with the teleconference which was scheduled for 9:30 a.m.

Rule of Procedure 7.3 discusses the consequences of a party not attending a hearing.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In accordance with the above, I dismiss the tenant's applications in their entirety without leave to re-apply.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all of the details of their submissions and evidence are reproduced here. The relevant and important aspects of the landlord's statements and my findings are set out below.

The landlord testified that the tenant signed a Mutual Agreement to End Tenancy (the "Mutual Agreement") in which the tenant agreed to vacate the rental unit on February 28, 2023. However, the tenant has not vacated the rental unit. A copy of the Mutual Agreement containing the signatures of the landlord and tenant is submitted into evidence.

The landlord testified that they served the tenant with a 10-Day Notice because the tenant failed to pay rent for March 2023. Since then, the tenant has also failed to pay rent for April 2023. The landlord indicated that they would like to obtain an Order of Possession and Monetary Order for unpaid rent.

Analysis

Section 44(1)(c) of the Act indicates that a tenancy ends when the landlord and tenant agree in writing to end the tenancy. Given that the parties mutually agreed to end the tenancy on February 28, 2023, I find it appropriate to grant an Order of Possession in the landlord's favour in accordance with section 62(3) of the Act.

A copy of the Order of Possession is attached to this Decision and must be served on the tenant. The tenant has two days to vacate the rental unit from the date of service or deemed service.

In accordance with the Mutual Agreement, the tenancy ended on February 28, 2023, prior to the issuing of the 10-Day Notice. As result, I find the 10-Day Notice which was issued because the tenant failed to pay rent in March is of no force or effect.

Importantly, the tenant currently meets the definition of an overholding tenant based on section 57 of the Act, meaning that they are continuing to occupy the rental unit after the tenancy is ended. Should the landlord require compensation from the tenant, the landlord may apply for that relief in accordance with section 57(3) of the Act. However, because the Order of Possession is granted based on the Mutual Agreement and not because the tenant's application to cancel the 10-Day Notice was dismissed, the landlord is not entitled to a Monetary Order for unpaid rent.

Conclusion

The landlord is granted an Order of Possession which will be effective two days after service upon the tenant. The Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: April 12, 2023

Residential Tenancy Branch