



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46 (the 10 Day Notice);
- an order to the landlord to make repairs to the rental unit pursuant to section 32.

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. No issues were raised with respect to the service of the application and evidence submissions on file.

Issues

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession and a monetary order for unpaid rent?

Should the landlord be ordered to make repairs?

Background and Evidence

The tenancy began on February 1, 2017. The current monthly rent is \$1700.00 payable on the 1st day of each month.

The parties agreed that the tenants received the 10 Day Notice on December 8, 2022. The 10 Day Notice indicates the tenant failed to pay rent in the amount of \$1150.00 which was due on December 1, 2022.

The landlord testified that the tenant did not pay the full amount of the arrears indicated on the 10 Day Notice within five days of being served and that the full amount is still

outstanding. The tenant acknowledged the outstanding rent was not paid within 5 days after receiving the 10 Day Notice.

The landlord is also claiming the tenant did not pay the rent in full for January, March and April 2023. The landlord testified that he only received a cheque on behalf of the tenant from the Ministry of Social Development in the amount of \$550.00 for the months of December and January 2023. For the months of March and April 2023, the landlord claims the entire \$1700.00 is outstanding. The landlord's total monetary claim is for \$5700.00.

The tenant testified that in his Ministry account the cheques for March and April in the amounts of \$550.00 show as being cashed but he did not provide any evidence of this.

The landlord disputed receiving or cashing these cheques.

Analysis

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.

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 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

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 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.

Further, as per section 55(1.1) if the application is in relation to a notice to end tenancy under section 46 [*landlord's notice: non-payment of rent*] an order requiring the payment of the unpaid rent must also be granted.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application must be dismissed as the tenant

acknowledged rent was not paid within 5 days after receiving the 10 Day Notice nor did the tenant have a right under this Act to deduct all or a portion of the rent.

I also accept the landlord's testimony that a total of \$5700.00 is rent is outstanding for the period of December 2022 to April 2023. The tenant provided no evidence in support of the partial rent payments he argued were received by the landlord.

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.

The landlord is granted a monetary award for outstanding rent in the amount of \$5700.00.

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.

I grant the landlord a Monetary Order in the amount of \$5700.00. 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: April 21, 2023

Residential Tenancy Branch