



Dispute Resolution Services

Page: 1

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;
- 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).

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide testimony and present evidence. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

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 March 1, 2022. The current monthly rent is \$1800.00 payable on the 1st day of each month.

The landlord submitted a copy of a 10 Day Notice dated February 6, 2023. The 10 Day Notice indicates the tenants failed to pay rent in the amount of \$1800.00 which was due on February 1, 2023. The 10 Day Notice provides that the tenants 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.

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

The landlord is seeking a monetary order for outstanding rent in the amount of \$9000.00. The landlord testified that this includes unpaid rent for the months of February 2023 through to June 2023

The tenant acknowledged receipt of the 10 Day Notice on February 6, 2023 and that he did not pay the full amount of the arrears indicated, within five days, of receiving the Notice. The tenant testified that he was two days past the five day window and he had the money but the landlord would not accept the payment. The tenant's support worker testified that she was present during a phone call in February 2023 during which the landlord stated she would not accept payment.

The landlord testified that at no time did she decline payments from the tenants. The landlord submits that the tenants rent is paid through e-transfer and the tenants could have submitted a payment anytime.

Analysis

I am satisfied that the tenant was served with the 10 Day Notice on February 6, 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. I do not accept the tenant's argument that the landlord refused the rent payments. The tenant has not paid rent for five months and could have at any time sent an e-transfer to the landlord as that is how rent was paid in the past. The tenant submitted no evidence of e-transfers being sent and declined by the landlord.

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*.

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.

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 tenant was obligated to pay monthly rent in the amount of \$1800.00 but failed to pay rent for the period of February 2023 through to June 2023. I accept the landlord's claim for outstanding rent of \$9000.00.

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 \$9,100.00.

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 \$9100.00. 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: June 05, 2023

Residential Tenancy Branch