



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNR

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 hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 11:15 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Should the landlord's 10 Day Notice to End Tenancy be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on October 1, 2013 with a monthly rent of \$475.00 payable on the 1st day of each month. The tenant paid a security deposit of \$237.50 at the start of the tenancy.

The landlord's agent testified that on June 27, 2016 he personally served the tenant with the 10 day Notice to End Tenancy for unpaid rent or utilities as the tenant had failed to pay rent due for April, May and June 2016.

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

The tenant's application to cancel the 10 Day Notice was filed on June 29, 2016 within the time period permitted under the Act.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent 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.

The tenant filed an application to dispute the Notice but did not participate in the Hearing. I accept the landlord's uncontested evidence and find that the tenant failed to pay outstanding rent in the amount of \$1425.00 within five days of receiving the 10 Day Notice to End Tenancy.

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 tenants 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 outstanding rent was not paid 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.

The tenant's application is dismissed without leave to reapply and the landlord is granted an Order of Possession pursuant to section 55 of the Act.

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.

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: August 10, 2016

