



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent or utilities, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenant.

Both parties appeared gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary procedure

In this case, the parties were at a previous hearing on April 7, 2020. At that hearing the Arbitrator adjourned the tenant's amended application filed on March 12, 2020 to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, to be joined and heard with the landlord's application. I have noted the file number on the covering page of this decision.

At the outset of the hearing the landlord stated that all rent has been paid; however, they are proceeding with the order of possession.

Issues to be Decided

Should the Notice be cancelled?

Is the landlord entitled to an order of possession for unpaid rent?

Background and Evidence

The tenant confirmed they received the Notice on March 3, 2020. The tenant confirmed they did not pay rent within five days as it was paid on March 12, 2020. The tenant stated they filed their amended to cancel the Notice on March 12, 2020.

The landlord stated that they have accepted occupancy rent for May 2020 and agree to extend the effective vacancy date of the Notice to May 31, 2020.

Analysis

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

I find that the tenant was served with a notice to end tenancy for non-payment of rent on March 3, 2020, by personal service. The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

Although the tenant disputed the Notice, in the amended application which was heard on April 7, 2020, it was not made within 5 days of receiving the Notice, nor was rent paid within 5 days as required by the Act. Therefore, I find the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective on the extended vacancy date of **May 31, 2020**. 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.

***Ministerial Order M089* issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020, prohibits the enforcement of certain Residential Tenancy Branch orders made during the state of emergency. Enforcement of other Residential Tenancy Branch orders may be affected by the suspension of regular court operations of the BC Supreme Court and Provincial Court.**

I find that the landlord has established a total monetary claim of \$100.00 for the fee paid by the landlord for this application. I authorize the landlord to retain the above amount from the tenant's security deposit in full satisfaction of this award.

Conclusion

The tenant failed to pay rent and did not file to dispute the notice to end tenancy with 5 days. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession. The landlord is authorized to keep the above amount from the tenant's security deposit to recover the cost of the filing fee.

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 23, 2020

Residential Tenancy Branch