



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the tenants' 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).

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?

Background and Evidence

The tenancy began on March 1, 2022 with a monthly rent of \$1725.00 plus \$71.50 for utilities payable on the 1st day of each month.

The parties agreed that the tenants received the 10 Day Notice date December 8, 2022 on December 12, 2022. The 10 Day Notice indicates the tenants failed to pay rent in the amount of \$7726.29 which was due on December 8, 2022.

The landlord testified that the tenants 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 testified that the total outstanding rent and utilities as of the date of the hearing was \$15,484.29. The tenant did not dispute this amount.

The tenant stated that he had recently filed for a consumer proposal under the Bankruptcy & Insolvency Act. The tenant stated he was not sure if any stay of proceedings would apply to an eviction order.

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 tenants 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 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. The tenant provided no legal basis for the consumer proposal applying to the Residential Tenancy Act.

I find the tenants failed to pay the outstanding rent as per the 10 Day Notice within 5 days of the Notice being served and that the tenants have accrued an outstanding rent and utilities amount of \$15,484.29 which includes rent and utilities payable to April 30, 2023.

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 monthly rent and utilities in the amount of \$15,484.29.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenants 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 \$15,484.29. Should the tenants 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 24, 2023

Residential Tenancy Branch