



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 Two Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49 (the Two Month Notice);
- cancellation of a 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46 (the 10 Day Notice);
- authorization to recover the filing fee for this application pursuant to section 72.

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. 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 and or Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession and a monetary order for unpaid rent?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenancy originally began in May 2019. On May 31, 2021, the parties entered into a new lease beginning June 1, 2021 with a monthly rent of \$2500.00 payable on the 1st day of each month.

The parties agreed that the tenants received the 10 Day Notice on February 6, 2023. The 10 Day Notice indicates the tenant failed to pay rent in the amount of \$2500.00 which was due on February 1, 2023.

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 landlord testified that the tenant also failed to pay rent for March and April 2023 and has not vacated the unit. The landlord is claiming a total of \$7500.00 in outstanding rent for the above three months.

The tenant acknowledged rent was not paid for March and April 2023. The tenant testified that he paid February rent on February 10, 2023. The tenant did not provide any evidence in support of this rent payment.

The landlord denied any rent being received on February 10, 2023.

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.

The tenant filed to dispute the 10 Day Notice within the time limit permitted under the Act. However, the tenant failed to present any supporting evidence that rent had been paid within five days of the Notice being received or anytime after. Accordingly, the tenant's application to dispute the 10 Day Notice is dismissed without leave to reapply.

I accept the landlord's testimony and find the tenant failed to pay the outstanding rent as per the 10 Day Notice within 5 days of the Notice being served and that the full amount is still outstanding. I also accept the landlord's claim for unpaid rent for March and April 2023 which was not disputed by the tenant.

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 \$7500.00 for the months of February, March and April 2023.

As this tenancy has ended pursuant to the 10 Day Notice I make no findings on the merits of the Two Month Notice dated November 21, 2022.

The tenant is not entitled to recover the filing fee.

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 \$7500.00. Should the tenant(s) 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 04, 2023

Residential Tenancy Branch