Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding 1359692 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   CNR

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the "Act") for cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice") pursuant to section 46.

SM and KD appeared as agents for the landlord.

SM testified that the tenant did not serve them with the Notice of Dispute Resolution Proceeding or evidence. SM stated that they are aware of this hearing because they were notified by the Residential Tenancy Branch. SM indicated that they wished to proceed with this hearing.

The landlord's agents were given full opportunity under oath to be heard, to present evidence and to make submissions. The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

Preliminary Matters

SM provided affirmed testimony that the landlord is a corporate landlord and not KD who is listed on the tenant's application. Pursuant to section 64(a) of the Act, I have amended the tenant's application to indicate the corporate landlord and not KD.

Rules of Procedure 7.3 and 7.4 discuss the consequences of a party not attending a hearing.

7.3 Consequences of not attending the hearing
If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

In accordance with the above, the hearing proceeded in the tenant's absence. I order the tenant's applications are dismissed without leave to reapply.

Issue(s) to be Decided

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

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord's agents, not all of the details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's submissions and my findings are set out below.

KD provided affirmed testimony that monthly rent is currently $1600.00 a month due on the first of the month. KD testified that the landlord collected a security deposit in the amount of $800.00 from the tenant, which the landlord continues to hold in trust.

SM testified that the 10-Day Notice was issued for unpaid rent. The tenant failed to pay rent in full in February 2023 accruing an outstanding balance of $400.00. Following this, the tenant did not pay any rent in the March 2023. The 10-Day Notice was issued for unpaid rent in the amount of $2,000.00. SM testified that the 10-Day Notice was served by attaching a copy to the door of the rental unit on March 15, 2023.

SM testified that since the 10-Day Notice was issued, the tenant has not paid rent for April or May 2023. Rent is currently outstanding in the amount of $5,200.00.

Analysis

I accept the undisputed testimony of the landlord that the 10-Day Notice was served on the tenant by attaching it to the door of the rental unit on March 15, 2023.

Pursuant to section 90 of the Act a document served in accordance with section 89 of the Act is deemed to be received if given or served by attaching to a door, on the third day after it is attached. In this case, the tenant is deemed to have received the 10-Day Notice on March 18, 2023, in accordance with section 90(c) of the Act.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10-Day Notice.

I accept SM's undisputed testimony that the 10-Day Notice was issued because the tenant did not pay the total amount of rent owing in February 2023 and then failed to pay any rent in March 2023. Therefore, I find on a balance of probabilities that the Notice was issued for a valid reason, namely, the non-payment of rent.

I also find that the Notice complies with the form and content requirements of section 52.

Based on the above findings, the landlord is granted an Order of Possession under section 55(1) of the Act. A copy of the Order of Possession is attached to this Decision and must be served on the tenant. The tenant has two days to vacate the rental unit from the date of service or deemed service.

Since the application relates to a section 46 notice to end tenancy, the landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenant is ordered to pay the outstanding $5,200.00 in unpaid rent to the landlord.

In accordance with the off-setting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit in partial satisfaction of the Monetary Order.

Conclusion

The landlord is granted an Order of Possession which will be effective two days after service upon the tenant. The Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

I issue a Monetary Order in the Landlord's favour in the amount of $4,400.00 as follows:

Item	Amount
Rent outstanding for February and March 2023	$2,000.00
Rent due April and May 2023 (2 x $1,600.00)	$3,200.00
Security Deposit	(-$800.00)
Total Monetary Order	$4,400.00

The tenant must be served with this Order as soon as possible. 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: May 08, 2023

Residential Tenancy Branch