



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant's application: CNR, LRE, LAT
Landlord's application: OPR-DR, MNR-DR

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear cross applications.

The tenant's application pursuant to the Act is for:

- Cancellation of a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) pursuant to section 46;
- An order to restrict or suspend the landlord's right of entry, under section 70;
- An order of authorization to change the lock, pursuant to sections 31 and 70;

The landlord's application pursuant to the Act is for:

- An order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) pursuant to sections 46 and 55;
- A monetary order for unpaid rent, pursuant to section 26;

Service of the Notice of Dispute Resolution Proceeding (Proceeding Package) and the Evidence

The tenant acknowledges receipt of the Proceeding Package and the landlord's evidence and are duly served in accordance with sections 89(1) and 88 of the Act.

The landlord stated that had not received the tenant's Proceeding Package nor the evidence. The tenant was unsure about the Proceeding Package and confirmed that

they had not sent the landlord the evidence. I find that the landlord has not been served with either in accordance with the Act. The landlord confirmed that they would like to proceed with the hearing.

Issue(s) to be Decided

Should the 10-Day Notice be cancelled? If not, is the landlord entitled to an order of possession and/or compensation for unpaid rent?

Should the tenant be authorized to change the locks? Should there be restrictions on the landlord's right to enter the rental unit?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant in my decision.

Both parties confirmed that this tenancy began on April 1, 2022, with a monthly rent of \$1,650.00, due on the first day of the month, with a security deposit in the amount of \$825.00. The current monthly rent is \$1,683.00.

During the hearing, the landlord stated that they had not received rent in September 2023, and so they issued a 10 Day Notice via email which was signed on September 5, 2023, indicated a move-out date of September 18, 2023, and listed \$1,683.00 that was due on September 1, 2023.

The tenant confirmed that they had not been able to pay rent for September 2023, and that they received the 10 Day Notice from the landlord by email – although unsure of the exact date they received it. They also confirmed that they had not paid rent for October 2023. The reason for not paying rent involved personal circumstances.

Analysis

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession and/or a Monetary Order for unpaid rent?

Section 46 of the Act states that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

I find that the 10 Day Notice was duly served to the tenant on September 8, 2023, three days after being emailed to the pre-agreed email address, and that the tenant had until September 13, 2023, to dispute the 10 Day Notice or to pay the full amount of the arrears.

The tenant acknowledged they have not paid rent since September 2023. The tenant gave reasons for not paying rent. None of the reasons the tenant provided are a lawful reason to not pay rent under the Act. For example, the tenant is not claiming they paid for emergency repairs.

For the above reasons, I find the landlord had cause to issue the Notice and the tenant's application for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act is dismissed, without leave to reapply. I also find that the landlord is entitled to an Order of Possession as well as a Monetary Order for unpaid rent from September and October 2023.

Should the tenant be authorized to change the locks? Should there be restrictions on the landlord's right to enter the rental unit?

Given my findings related to the 10 Day Notice, these claims are now moot as the landlord has been granted an Order of Possession. These claims are dismissed without leave to reapply.

Conclusion

The Tenant's application is dismissed without leave to reapply.

The landlord is provided with the following orders which must be served to the tenant by the landlord:

An Order of Possession to the landlord **effective October 31, 2023, at 1:00 PM, after service of this Order on the tenant.**

Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

A Monetary Order in the amount of **\$3,366.00** for unpaid rent from September and October 2023.

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: October 26, 2023

Residential Tenancy Branch