



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SCORKARD HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNRT, ERP, FFT

Introduction

I was designated to hear this matter under section 58 of the *Residential Tenancy Act* (the *Act*). This hearing dealt with an application from the tenant/Applicant pursuant to the *Act* for the following with respect to the above-noted tenancy:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord/Respondent appeared at the date and time set for the hearing of this matter. The Applicant did not, although I waited until 11:11 a.m. to enable the Applicant to connect with this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord's representatives and I were the only people who had called into this teleconference.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, **in the absence of any appearance at this hearing by the Applicant, I order the application dismissed without liberty to reapply.**

Based on the sworn testimony of the landlord, and written evidence provided by both the tenant in the application and by the landlord, I find that the tenant was handed the 10 Day Notice on May 16, 2018. I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*.

As the landlord's representatives confirmed that they received a copy of the tenant's dispute resolution hearing package, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. The landlord's agent TM testified that the landlord provided a copy of the landlord's written evidence to the tenant on June 2, 2018. I find that this written evidence, all of which would already have been in the possession of the tenant, was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to a monetary award for emergency repairs that they undertook and paid for during this tenancy? Should an order be issued against the landlord to make emergency repairs for health and safety reasons that were requested in writing by the tenant?

Background and Evidence

This month-to-month tenancy commenced on December 1, 2014. Monthly rent is set at \$800.00, payable on the first of each month, plus hydro. The landlord continues to hold the \$400.00 security deposit for this tenancy paid on December 1, 2014.

The landlord submitted a copy of the Residential Tenancy Agreement (the Agreement) for this tenancy identifying the tenant and a co-tenant as the people who signed the Agreement on March 25, 2017. The landlord also provided a copy of two 10 Day Notices to End Tenancy, dated January 4, 2018 and May 16, 2018. The landlord did not act on the January 2018 10 Day Notice. The 10 Day Notice of May 16, 2018 identified a total of \$3,500.00 in unpaid rent owing at that time.

In a Monetary Order Worksheet that the landlord submitted in support of the landlord's application for a monetary award of \$2,700.00 to be heard by an Arbitrator appointed pursuant to the *Act* on August 16, 2018 (see first page of this decision), the landlord outlined the amounts owing prior to June 1, 2018 as follows:

Item	Amount
December 2017 Rent	\$800.00
January 2018 Rent	800.00
February 2018 Rent	800.00
March 2018 Rent	800.00
April 2018 Rent	800.00
Less Partial Rent Payment of Rent Owing on April 3, 2018	-900.00
Less Partial Rent Payment of Rent Owing on April 17, 2018	-500.00
Less Partial Rent Payment of Rent Owing on May 3, 2019	-700.00
Total Rent Owing as of May 16, 2018	\$2,700.00

Since then another \$800.00 in rent has become owing for June 2018.

Analysis

When the tenant files an application to dispute a 10 Day Notice, the landlord bears the burden to prove the grounds for the 10 Day Notice. Section 26(1) of the *Act* establishes 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(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent “by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.” Section 46(2) of the *Act* requires that “a notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Based on undisputed testimony of the landlord, I find that the tenant was served with the Notice to End Tenancy, and I find that the 10 Day Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

In accordance with sections 46, 52 and 55 of the *Act*, I dismiss the tenant's application and grant the landlord a two day Order of Possession as this tenancy ended on May 31, 2018, the effective date noted on the 10 Day Notice.

Conclusion

I dismiss the tenant's application in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: June 15, 2018

Residential Tenancy Branch