



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOWN OF CRESTON
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MT
OPRM-DR, FFL

Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) and for an extension of time to dispute the 10 Day Notice. The Landlord applied for an Order of Possession based on the 10 Day Notice, for a Monetary Order for Unpaid Rent, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Two agents for the Landlord (the “Landlords”) were present for the teleconference, as was one of the Tenants. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package regarding the Landlord’s application and a copy of the Landlord’s evidence. The Landlords confirmed receipt of the Notice of Dispute Resolution Proceeding package regarding the Tenants’ application but no evidence. It was confirmed that the Tenants submitted a copy of the 10 Day Notice into evidence which the Landlords had a copy of as well.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Preliminary Matters

At the outset of the hearing the Tenant requested an adjournment as he was waiting on further evidence to submit and serve to the Landlords. However, the request was denied as I find that a dispute over a 10 Day Notice and unpaid rent is an urgent matter that should be resolved as soon as possible. I also find that the Tenants filed the Application for Dispute Resolution on June 18, 2019 and therefore that they had sufficient time to gather and submit evidence in support of their claim prior to the hearing on August 2, 2019.

The Landlords were given the opportunity to respond to the adjournment request and expressed that they were not in agreement to an adjournment and requested that the matter be resolved at

the hearing as scheduled. Therefore, the adjournment request was denied, and the hearing continued.

The Landlord applied for compensation in the amount of \$8,473.50. However, at the hearing they stated that an additional two months of rent are outstanding in the amount of \$1,100.00 per month. I find it reasonable that the Landlords would claim an additional two months of rent while waiting for the scheduled hearing.

I also find that the Tenants should reasonably expect that the Landlord would be seeking the additional months of rent. Therefore, I accept the Landlord's request to amend the application and pursuant to Section 64(3)(c) of the *Act*, amend the Landlord's application to a total claim of \$10,673.50.

Issues to be Decided

Should the Tenants be granted an extension of time to dispute the 10 Day Notice to End Tenancy for Unpaid Rent?

Should the 10 Day Notice to End Tenancy for Unpaid Rent be cancelled?

If the 10 Day Notice to End Tenancy for Unpaid Rent is upheld, is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were also confirmed by the tenancy agreement submitted into evidence. The tenancy began on August 1, 2017. Rent in the amount of \$1,100.00 is due on the first day of each month. A security deposit of \$550.00 was paid at the start of the tenancy.

The Landlords testified that they served the Tenants with a 10 Day Notice on June 7, 2019. They stated that the notice was provided to an adult child of the Tenants at the rental unit. The 10 Day Notice dated June 5, 2019 was submitted into evidence and states that \$8,473.50 was unpaid as due on June 1, 2019,

The Landlords stated that the Tenants have owed rent for many months and have continually made promises to pay and try to get caught up. They stated that they tried to be understanding but are no longer able to continue the tenancy as the Tenants have not followed through on their commitment to pay the outstanding rent. They noted that previous 10 Day Notices had been served.

The Landlords testified that no rent has been paid since service of the 10 Day Notice, including no rent received for July or August 2019 which makes the total owing \$10,673.50. The Landlords submitted an account ledger which shows rent owing dating back to 2017.

The Tenant confirmed receipt of the 10 Day Notice but was unsure as to the exact date received. He confirmed that the notice was provided to him from the adult daughter it was given to and that he likely received it a couple days later. The Tenants applied for dispute resolution on June 18, 2019.

The Tenant applied for an extension of time to dispute the notice and stated that this was due to needing more time to move. The parties discussed a possible settlement but were unable to reach an agreement.

The Tenant confirmed that they have been unable to catch up on outstanding rent and he agreed that an amount of \$10,673.50 is owed.

Analysis

Section 46(1) of the *Act* states the following:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, 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.

As the Tenant agreed that he owed an amount of rent at the time of the 10 Day Notice, I find that the 10 Day Notice is valid, and the Landlord was within their rights under the *Act* to serve the Tenants with this notice.

As stated in Section 46(4) of the *Act*, a tenant has 5 days after receipt of a 10 Day Notice to pay the outstanding rent or apply to dispute the notice.

Although the Tenant was unsure as to the exact day the notice was received, he stated it was likely a couple days after it was served on June 7, 2019. As the Tenants applied for dispute resolution on June 18, 2019, I find that they did not apply within the 5 days allowable.

However, the Tenants also applied for an extension of time in which to dispute the 10 Day Notice. When asked about the request for more time, the Tenant testified that they need more time to find a place to move.

As stated in Section 66(1) of the *Act*, a time limit may be extended in exceptional circumstances only. I find that the Tenant did not provide sufficient testimony or evidence to establish that there were exceptional circumstances present that prevented them from applying to dispute the notice within the 5 days allowable. I dismiss the Tenants' application, without leave to reapply.

Therefore, as the rent owing was not paid within 5 days and the notice was not disputed within 5 days, I find that Section 46(5) applies as follows:

- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

Upon review of the 10 Day Notice, I find that it complies with the form and content requirements of Section 52 of the *Act* and therefore I find that the Landlord is entitled to an Order of Possession pursuant to Section 55 of the *Act*. I grant the Landlord a two-day Order of Possession to be served upon the Tenants.

Regarding the Landlord's claim for unpaid rent, I accept the testimony and evidence of the Landlord as to the amount owing. I also find that the Tenant agreed as to the amount owed and am therefore satisfied that the Tenants owe the Landlord an amount of \$10,673.50 for unpaid rent.

As the Landlord was successful with their application, pursuant to Section 72 of the *Act* I award the recovery of the filing fee in the amount of \$100.00. The Landlord may retain the security deposit towards the total amount owing and is therefore granted a Monetary Order in the amount outlined below:

Amount owing as of 10 Day Notice dated June 5, 2019	\$8,473.50
--	------------

July 2019 rent	\$1,100.00
August 2019 rent	\$1,100.00
Filing fee	\$100.00
<i>Less Security deposit</i>	<i>(\$550.00)</i>
Total owing to Landlord	\$10,223.50

Conclusion

The Tenants' Application for Dispute Resolution is dismissed, without leave to reapply.

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. 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.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$10,223.50** as outlined above. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. 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: August 02, 2019

Residential Tenancy Branch