



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

On February 22, 2021 the tenant applied for dispute resolution for an order cancelling the 10-Day Notice to End Tenancy Issued for Unpaid Rent or Utilities issued by the landlord (the “10-Day Notice”).

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 14, 2021. The landlord attended the telephone conference call hearing; the tenant did not attend.

The tenant did not attend the hearing, although I left the teleconference hearing connection open until 1:55pm to enable them to call in to this teleconference hearing scheduled for 1:30pm. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Hearing generated when the tenant applied. I also confirmed throughout the duration of the call that the tenant was not in attendance.

Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the tenant’s application for cancellation of the 10-Day Notice without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to issue an Order of Possession pursuant to s. 55 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenant submitted a copy of the tenancy agreement with their evidence for this hearing. The tenancy began on

The landlord spoke to the terms of the tenancy agreement, a copy of which they provided as evidence. The tenancy began on August 4, 2020 for a fixed term ending on August 31, 2021. After this time period, the tenancy would continue as month-to-month. The rent amount was \$2,275 per month. The tenant paid a security deposit of \$1,137.50.

The landlord provided a copy of the 10-Day Notice, issued February 17, 2021. This document gave the move-out date of March 3, 2021. This listed the failure by the tenant to pay the rent of \$2,275 on February 1, 2021. The landlord served this document by attaching it to the door of the rental unit. As provided in a 'Proof of Service' document, a witness observed this service.

In the hearing, the landlord provided that the tenant has not paid rent since January 2021. At the time of this hearing in June, the landlord had no communication with the tenant. The landlord provided that the tenant was still occupying the rental unit.

Analysis

From the evidence and testimony of the landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rent payments as well as the amount the tenant paid for the security deposit. The tenant did not attend the hearing; therefore, there is no evidence before me to show otherwise.

The *Act* s. 46(1) states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

Following this, s. 46(4) states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

I am satisfied that when the landlord issued the 10-Day Notice the tenant owed \$2,275 in rent for the month of February 2021. I am satisfied the landlord issued the 10-Day Notice on February 17, 2021, and I find it was deemed received by the landlord on February 20, as per s. 90(c) of the *Act*. There is no evidence contrary to that of the landlord presented in the hearing. My finding here is also supported by the fact that the tenant applied to dispute the 10-Day Notice on February 22, 2021.

By my application of Rule 7.3, the tenant's Application to cancel the 10-Day Notice is dismissed. The tenancy is ending.

Under s. 55 of the *Act*, when the tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied the 10-Day Notice complies with the requirements under s. 52 regarding form and content, I must grant the landlord an order of possession.

I find that the 10-Day Notice complies with the requirements of form and content. The landlord is entitled to an order of possession on the effective date.

The *Act* s. 55(1.1) provides that I must grant an order requiring the payment of the unpaid rent. As per the 10-Day Notice, I grant the rent amount \$2,275 with a Monetary Order. The landlord must file an Application for an order for the other rent amounts outstanding.

Conclusion

As the applicant tenants did not attend to present their Application, I dismiss their application for a cancellation of the 10-Day Notice, without leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. 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.

Pursuant to s. 55(1.1) of the *Act*, I grant the landlord a separate Monetary Order for the recovery of the unpaid rent referred to in the 10-Day Notice. This amount is \$2,275. The landlord is provided with this Order in the above terms and 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 s. 9.1(1) of the *Act*.

Dated: June 14, 2021

Residential Tenancy Branch