



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR
 CNR

Introduction

On March 8, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities issued on March 8, 2021. The matter was set for a conference call.

On May 3, 2021, the Tenant submitted a second Application for Dispute Resolution under the *Act* to cancel a second 10-Day Notice to End Tenancy for Unpaid Rent or Utilities issued on May 2, 2021. The matter was crossed with the Tenant's original application and set for the same conference call.

The Tenant, two Landlords and both of these Landlord's spouses (the “Landlord”) attend attended the hearing, both the Tenant and the Landlord were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Notice issued on March 8, 2021, be cancelled?
- Should the Notice issued on May 2, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession and monetary order pursuant to section 55 of the *Act*?

Background and Evidence

The parties agreed that the tenancy began on January 15, 2020. Rent in the amount of \$1,100.00 is to be paid by the first day of each month, and the Landlord is holding a \$550.00 security deposit for this tenancy.

The Landlord testified that they served the first 10-Day Notice to the Tenant on March 8, 2021, by posting it to the front door of the rental unit. The 10-Day Notice listed an effective date of March 16, 2021, and an outstanding rent amount of \$1,500.00.

Both parties agreed that the Tenant paid the full outstanding rent amount, as indicated in this Notice on March 16, 2021.

The Landlord testified that they served the second 10-Day Notice to the Tenant on May 2, 2021, by posting it to the front door of the rental unit. The 10-Day Notice listed an effective date of May 12, 2021, and an outstanding rent amount of \$2,200.00, consisting of \$1,100.00 for April and \$1,100.00 for May 2021.

The Landlord also testified that the Tenant had not paid the outstanding rent indicated on the May 2, 2021, notice, nor had they paid the rent for June 2021.

The Tenant testified that they had not paid the rent for April, May, and June 2021 for this tenancy.

The Landlord is requesting that the May 2, 2021 Notice be enforced and that an order of possession and monetary order be issued, as the Tenant did not pay the rent within five days of receiving the 10-Day Notice as required.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent, a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

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.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

(4) *Within 5 days after receiving a notice under this section, the tenant may*

(a) pay the overdue rent, in which case the notice has no effect,
or

(b) dispute the notice by making an application for dispute resolution.

(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.

Pursuant to section 90 of the Act, I find that the Tenant received the first 10-Day notice on March 11, 2021, three days after it was posted to the front door of the rental unit, and that they did pay the full amount of rent indicated on that notice on March 16, 2021, within the legislated timeline. Therefore, I find that the Notice issued on March 8, 2021, is of no force or effect under the Act.

I find that the Tenant received the second 10-Day notice on May 5, 2021, three days after it was posted to the front door of the rental unit, pursuant to section 90 of the Act and that they did apply to dispute the Notice within the legislated timeline.

I accept the agreed-upon testimony of both parties that the Tenant has not paid the outstanding rent as stated on the 10-Day Notice within the required five days after receiving the Notice. Therefore, I find that the Tenant is in breach of section 26 of the Act by not paying the rent in accordance with the tenancy agreement, and I dismiss the Tenant's application to cancel the 10-Day Notice issued on May 2, 2021.

Sections 55 of the *Act* states that a landlord may request an order of possession and a monetary order if a notice to end the tenancy for unpaid rent has been given by the landlord and the Tenant's application to dispute that notice is dismissed.

Order of possession for the landlord

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.*

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I have reviewed the 10-Day Notice to End Tenancy, and I find the 10-Day Notice complies with section 52 of the *Act*. As I have dismissed the Tenant's application, pursuant to section 55(1) of the *Act*, I must grant the Landlords an order of possession to the rental unit.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Additionally, as I have dismissed the Tenant's application, pursuant to section 55(1) of the *Act*, I must also grant the Landlords a monetary order for the outstanding rent due for this tenancy.

In this case, I accept the agreed-upon testimony of these parties that the rent has not been paid for April, May, and June 2021. I find that the Tenant breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$3,300.00, comprised of \$1,100.00 in rent for April, \$1,100.00 in rent

for May 2020, and \$1,100.00 in rent for June 2020. I grant the Landlord permission to retain the security deposit they are holding for this tenancy in partial satisfaction of this award.

I grant the Landlord a monetary order in the amount of \$2,750.00, consisting of \$3,300.00 in outstanding rent, less \$550.00 in the security deposit they are holding for this tenancy.

Conclusion

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.

I find for the Landlord under sections 26, 55.1 and 65 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$2,750.00**. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 15, 2021

Residential Tenancy Branch