



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on April 12, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 4, 2021 (the "10 Day Notice").

The hearing was scheduled for 11:00 A.M. on June 22, 2021 as a teleconference hearing. The Landlord attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 12 minutes before the call ended. 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 and I were the only persons who had called into this teleconference.

Preliminary Matters

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlord and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 11:00 A.M. on June 22, 2021.

Rule 7.3 of the Rules of Procedure states that if a party fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. As neither the Tenant, nor a representative acting on their behalf attended the hearing to present any evidence or

testimony for my consideration regarding the Tenant's Application, I therefore dismiss the Tenant's Application in its entirety without leave to reapply.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession, and an order requiring the payment of the unpaid rent, if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*. Having made the above finding, I will now turn my mind to whether the Landlord is entitled to an Order of Possession and a monetary order for unpaid rent, pursuant to section 55 of the *Act*.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 55 and 67 of the *Act*?

Background and Evidence

The Landlord testified that the tenancy began on December 1, 2020. The Tenant is required to pay rent in the amount of \$750.00 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$325.00 which the Landlord continues to hold.

The Landlord testified the Tenant did not pay the full amount of rent when due for March 2021 and paid no rent for April 2021. The Landlord stated that he subsequently served the Tenant with a 10 Day Notice dated April 4, 2021 with an effective date of April 17, 2021 by placing it in the Tenant's mailbox on April 4, 2021. The Landlord provided a proof of service as well as a text message from the Tenant dated April 4, 2021 which indicates that the Tenant received the 10 Day Notice on April 4, 2021.

The Landlord testified that the 10 Day Notice indicates that the Tenant failed to pay rent in the amount of \$800.00 (\$50.00 March 2021 and \$750.00 for April 2021) to the Landlord which was due on April 1, 2021.

The Landlord stated that the Tenant has not paid any amount of outstanding rent to the Landlord since receiving the 10 Day Notice. Furthermore, the Landlord stated that the Tenant has also failed to pay rent for May, and June 2021. The Landlord stated that the Tenant currently owes rent in the amount of \$2,300.00. As such, the Landlord is seeking an order of possession and a monetary order in relation to the unpaid rent.

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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 of the *Act* states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

The Landlord testified that he served the Tenant with a the 10 Day Notice dated April 4, 2021 with an effective vacancy date of April 17, 2021 by placing it in the Tenant's mailbox on April 4, 2021. I find that the Landlord provided sufficient evidence to demonstrate that the Tenant received the 10 Day Notice on April 4, 2021. As such, I find the 10 Day Notice was sufficiently served pursuant to Section 88 of the *Act*.

After receiving the 10 Day Notice, the Tenant made an Application to cancel the 10 Day Notice on April 12, 2021. As this is outside of the 5 day limitation period to dispute a notice to end tenancy, combined with the fact that no one attended the hearing for the Tenant, their Application to cancel the 10 Day Notice is dismissed without leave to

reapply. Furthermore, I find that the Tenant has not paid the outstanding rent owed to the Landlord.

According to Section 55 of the Act: (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 find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. 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.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$2,300.00. I find it appropriate in the circumstances to order that the Landlord retain the \$325.00 security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$1,975.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$2,300.00
<i>LESS</i> security deposit:	-(<i>\$325.00</i>)
TOTAL:	\$1,975.00

Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$1,975.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 22, 2021

Residential Tenancy Branch