



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing dealt with the tenant's application and amendment, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 1, 2021 ("first 10 Day Notice"), pursuant to section 46;
- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 7, 2021 ("second 10 Day Notice"), pursuant to section 46;
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 14 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she owned the rental unit.

This hearing began at 11:00 a.m. and ended at 11:14 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only people who called into this teleconference.

At the outset of the hearing, I informed the landlord that Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recording of a hearing by any party. The landlord affirmed under oath that she would not record this hearing.

The landlord did not make any adjournment or accommodation requests.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and amendment. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and amendment.

The landlord testified that she served the tenant with the landlord's first 10 Day Notice on May 1, 2021, by email and second 10 Day Notice on May 7, 2021, by posting to the tenant's rental unit door. She confirmed that the first 10 Day Notice indicates an effective move-out date of May 11, 2021, and the second 10 Day Notice indicates an effective move-out date of May 17, 2021.

In accordance with sections 43 and 44 of the *Residential Tenancy Regulation* ("*Regulation*"), I find that the tenant was deemed served with the landlord's first 10 Day Notice on May 4, 2021, three days after its emailing, to an email address provided by the tenant for service. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's second 10 Day Notice on May 10, 2021, three days after its posting.

The tenant indicated that he received the first 10 Day Notice on May 1, 2021, by email and the second 10 Day Notice on May 7, 2021, by posting to his door, in this application and amendment, when he applied to cancel the two notices.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the RTB *Rules* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent 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 re-apply.

In the absence of any evidence or submissions from the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel two 10 Day Notices, the landlord is entitled to an order of possession if the notices meet the requirements of section 52 of the *Act*.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

While I have turned my mind to the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on December 1, 2020. Monthly rent in the amount of \$2,000.00 is payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord issued the two 10 Day Notices for unpaid rent of \$2,000.00 due on May 1, 2021. The landlord testified that the tenant failed to pay \$2,000.00 for each month from May to July 2021, totalling \$6,000.00. The landlord seeks an order of possession based on the 10 Day Notice. The landlord also seeks a monetary order of \$6,000.00 for unpaid rent.

Analysis

First 10 Day Notice

Section 46(1) of the Act states the following (my emphasis added):

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.*

The landlord's first 10 Day Notice, dated May 1, 2021, is cancelled and of no force or effect. As noted above in section 46(1) of the *Act*, the landlord may only end a tenancy if rent is unpaid on any day after the day it is due. The landlord issued the first 10 Day Notice on May 1, 2021 and served it on the same date. Since rent is due on the first day of each month, the landlord cannot issue the 10 Day Notice on May 1, 2021.

Second 10 Day Notice

According to subsection 46(4) of the *Act*, a tenant may dispute a 10 Day Notice by making an application for dispute resolution within five days after the date the tenant received the notice. The tenant is deemed to have received the second 10 Day Notice on May 10, 2021 and filed his amendment to dispute it on May 11, 2021. Therefore, he was within the five-day time limit to dispute the second 10 Day Notice. However, the tenant did not appear at this hearing to present his application.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which in this case required the tenant to pay by the first day of each month.

On a balance of probabilities, I accept the landlord's undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent of \$2,000.00 due on May 1, 2021, within five days of being deemed to have received the second 10 Day Notice.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days or to appear at this hearing to pursue his application, led to the end of this tenancy on May 20, 2021, the corrected effective date on the second 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by May 20, 2021.

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.*

As noted above, I dismissed the tenant's application. I find that the landlord's second 10 Day Notice complies with section 52 of the *Act*. Accordingly, I find that the landlord is entitled to an Order of Possession effective two (2) days after service on the tenant.

Monetary Order

Section 55(1.1) of the *Act* states the following:

55(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.

Effective on March 25, 2021, the landlord is entitled to a monetary order for unpaid rent without filing a separate application. The tenant filed this application on May 4, 2021. As noted above, the tenant's application to cancel the second 10 Day Notice was dismissed without leave to reapply. As noted above, the landlord's second 10 Day Notice complies with section 52 of the *Act* and I have upheld that notice.

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$2,000.00 for each month from May to July 2021. Although this hearing occurred on July 19, 2021, I find that the rent was due on July 1, 2021, so the tenant owes rent for the full month of July 2021. Therefore, I find that the landlord is entitled to \$6,000.00 in rental arrears from the tenant.

The landlord continues to hold the tenant's security deposit of \$1,000.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's entire security deposit, of \$1,000.00, in partial satisfaction of the monetary award. No interest is payable over the period of this tenancy.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain the tenant's entire security deposit of \$1,000.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$5,000.00 against the tenant. 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: July 19, 2021

Residential Tenancy Branch