



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNR

Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Preliminary Issue- Attendance

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:43 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 ones who had called into this teleconference.

Rule 7.1 of the Residential Tenancy Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that 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.

Based on the above, in the absence of any evidence or submissions from the applicant I order the application dismissed without liberty to reapply.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the “application”) 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 or a monetary order for unpaid rent if the application is dismissed or the landlord’s notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that he was not recording this dispute resolution hearing.

The landlord confirmed his email address for service of this decision and orders.

Preliminary Issue- Amendment

The tenant’s application for dispute resolution listed the landlord’s last name twice. In the hearing the landlord confirmed the correct spelling of his name. Pursuant to section 64 of the *Act*, I amend the tenant’s application to remove the duplication of the landlord’s last name.

Preliminary Issue- Evidence

The landlord testified that he personally served his evidence on the tenant on September 26, 2021. The landlord entered into evidence a video of him handing a man standing in front of the subject rental property the evidence package for this hearing. In the video the address of the subject rental property can be seen. I accept the landlord’s undisputed testimony and find that the landlord’s evidence was personally served on the tenant on September 26, 2021 in accordance with section 88 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession pursuant to section 55(1) of the *Act*?
2. Is the landlord entitled to a Monetary Order pursuant to section 55(1.1) of the *Act*?

Background and Evidence

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

The landlord provided the following undisputed testimony. The landlord purchased the subject rental property in June of 2021. The tenancy agreement provided by the previous owner states that this tenancy began on March 1, 2018. The tenant has not moved out. Monthly rent in the amount of \$2,250.00 is payable on the first day of each month. Pages 1, 3 and 6 of a written tenancy agreement signed by the tenant and the previous landlord were submitted for this application.

The landlord testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") on the tenant's door on June 2, 2021. The 10 Day Notice was entered into evidence and states that the tenant failed to pay rent in the amount of \$2,250.00 that was due on June 1, 2021. The 10 Day Notice states that the tenant must move out of the subject rental property by June 16, 2021. The landlord testified that the tenant did not pay June 2021's rent until June 15, 2021. The landlord entered into evidence a rent receipt dated June 15, 2021 which states:

The payment for rent is being accepted for use and occupancy only – it does not cancel the notice to end tenancy. The tenant must still move out. \$2,250.00.

The tenant filed to cancel the 10 Day Notice on June 7, 2021.

The landlord testified that the tenant only paid \$1,125.00 towards August 2021's rent and has not paid any money towards rent for September and October 2021.

The landlord testified that he also served the tenant with a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit on June 30, 2021 (the "Four Month Notice").

Analysis

I find that since the tenant filed to dispute the 10 Day Notice on June 7, 2021, the tenant must have received it on or before that date, and in any event is deemed to have

received the 10 Day Notice on June 5, 2021, three days after its posting, in accordance with sections 88 and 90 of the *Act*. Upon review of the 10 Day Notice I find that it conforms to the form and content requirements of the *Act*.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$2,250.00 on the first day of each month. Based on the undisputed testimony of the landlord and the rent receipts entered into evidence I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord rent as follows:

- August 2021: \$1,125.00
- September 2021: \$2,250.00
- October 2021: \$2,225.00
- **Total: \$5,625.00**

Section 55(1) and section 55(1.1) of the *Act* state:

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.

Since the tenant's application was dismissed and the 10 Day Notice complies with section 52 of the *Act*, pursuant to section 55(1.1) of the *Act*, I must grant the landlord a monetary award for unpaid rent in the amount of \$5,625.00.

Section 46(1) of the *Act* states that 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) of the *Act* states that 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.

Based on the landlord's undisputed testimony and the rent receipts entered into evidence, I find that the tenant did not pay June 2021's rent until June 15, 2021, 10 days after the tenant received the 10 Day Notice. I find that the tenant did not pay the overdue rent within five days of receiving the 10 Day Notice, I therefore uphold the 10 Day Notice.

Pursuant to section 55(1) of the *Act*, since the tenant's application was dismissed and the 10 Day Notice conforms to section 52 of the *Act*, the landlord is entitled to a two-day Order of Possession. I find that pursuant to the 10 Day Notice this tenancy ended on the effective date of the 10 Day Notice, that being June 16, 2021. I find that since the tenancy ended on June 16, 2021, weeks before the Four Month Notice was served on the tenant, the Four Month Notice is void and of no force or effect.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
August rent	\$1,125.00
September rent	\$2,250.00
October rent	\$2,250.00
TOTAL	\$5,625.00

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.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

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: October 04, 2021

Residential Tenancy Branch