



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR-DR, OPR-DR
Tenant: CNR

Introduction

This was a cross application hearing that dealt with the tenants' 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.

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

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55; and
- a Monetary Order for unpaid rent, pursuant to section 67.

The tenants and landlord K.S. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

Both parties agree that they were each personally served with the other's application for dispute resolution and evidence. I find that the parties were sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act* because the parties testified that they received the above documents.

The landlords' application for dispute resolution lists both landlords that are listed on the signed tenancy agreement. The tenants' application only lists one of the two landlords. Pursuant to section 64 of the *Act*, I amend the tenants' application to list both landlords.

Landlord K.S. testified that the tenants do not currently owe rent money. Landlord K.S. testified that he is still seeking an Order of Possession. As the tenants do not currently owe rent money, I dismiss the landlords' application for a Monetary Order for unpaid rent.

Issue to be Decided

1. Are the landlords entitled to an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*?
2. Are the tenants entitled to cancel the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on January 1, 2019 and is currently ongoing. Monthly rent in the amount of \$1,200.00 is payable on the first day of each month. A security deposit of \$600.00 and a pet damage deposit of \$400.00 were paid by the tenants to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenants did not pay rent for May 2021 and that the landlords and the tenants signed an agreement which states in part:

a repayment arrangement of \$1200.00/unpaid rent for May, 2021.

The tenants will pay an extra \$600.00/month for June, 2021 and July, 2021 above the \$1200.00/month rent. A total of \$1800.00/month for June, 2021 and July 2021. Starting August 01 rent will revert to \$1200.00/month.

The **10 Day Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30)** will not be issued as long as the above conditions are met. If the above conditions are not met, the **10 Day Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30)** will be issued at the first missed payment, after the first day of June, 2021 or July, 2021.

Both parties agree that the tenants did not pay rent on June 1, 2021 or the \$600.00 repayment for ½ of May 2021's unpaid rent. Both parties agree that the tenants paid \$600.00 for ½ of May 2021's rent on June 3, 2021.

Landlord K.S. testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") was posted on the tenants' door on June 9, 2021. The tenants testified that they received the 10 Day Notice on June 9, 2021. The 10 Day Notice was entered into evidence and states that the tenants failed to pay rent in the amount of \$1,800.00 due on June 1, 2021.

Both parties agree that rent was later paid as follows:

Date	Amount
August 5, 2021	\$600.00 for remainder of May 2021's rent
August 6, 2021	\$1,200.00 for June 2021's rent
August 25, 2021	\$600.00 for ½ of July 2021's rent
September 25, 2021	\$3,000.00 for ½ of July 2021's rent and rent for September 2021
September 29, 2021	\$1,200.00 for October 2021's rent

The tenants testified that they had a very difficult year and were temporarily unable to pay their rent on time but are currently in a better financial situation and are now able to pay rent on time. Tenant L.S. testified that she suffered a stroke in January 2021 and tenant S.S. testified that he was dealing with a loss in the family.

Analysis

Based on the testimony of both parties I find that the tenants were served with the 10 Day Notice in accordance with section 88 of the *Act*. Upon review of the 10 Day Notice I find that it meets the section 52 form and content requirements of the *Act*.

Based on the testimony of both parties I find that the tenants failed to pay May 2021's rent and the landlords agreed not to serve the tenants with a 10 Day Notice as long as the tenants paid future rent on time and made payments in accordance with the repayment schedule. I find that the tenants did not pay June 2021's rent on June 1, 2021 when it was due and did not make payments in accordance with the repayment plan.

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.

Section 55 of the *Act* states that 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.

Both parties agree that at the time the 10 Day Notice was served, the tenants owed \$1,800.00 in unpaid rent for ½ of May 2021's rent and for June 2021's rent. Both parties agree that the tenants did not pay the overdue rent within five days of receiving the 10 Day Notice. I therefore find, pursuant to section 46 of the *Act*, that the 10 Day Notice is valid. I dismiss the tenants' application to cancel the 10 Day Notice.

The tenants' personal circumstances are undoubtedly difficult; however, section 46 and 55 of the *Act* are clear, if the tenants owe rent and do not pay it within five days of receiving the 10 Day Notice, the landlords are entitled to an Order of Possession. The

10 Day Notice meets the section 52 requirements and the tenants' application was dismissed. Pursuant to section 55 of the *Act*, the landlords are entitled to an Order of Possession. As the tenants have paid October 2021's rent, I find that the landlords are entitled to an Order of Possession effective at 1:00 p.m. on October 31, 2021.

Conclusion

Pursuant to sections 46 and 55 of the *Act*, I grant an Order of Possession to the landlords effective at **1:00 p.m. on October 31, 2021**, which should be served on the tenants. Should the tenants 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 08, 2021

Residential Tenancy Branch