



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE

Introduction

On June 25, 2021, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”) and seeking to restrict the Landlords’ right to enter the rental unit pursuant to Section 70 of the *Act*.

The Tenant attended the hearing. Landlord H.Q. attended the hearing with A.Q. attending as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served a Notice of Hearing and evidence package to the Landlords by registered mail sometime in August 2021. A.Q. advised that the Landlords received this package in mid-August 2021, but it was served late and not in accordance with Rule 3.1 of the Rules of Procedure (the “Rules”). As well, no evidence was included in this package. However, other than this service not complying with the Rules, he stated that there was no prejudice to the Landlords.

While this package was not served pursuant to the Rules, as the Landlords had sufficient time to respond to the Tenant’s claims, I am satisfied that the Landlords were

served the Tenant's Notice of Hearing package. With respect to the Tenant's evidence, as the Landlord indicated that no evidence was included in the Notice of Hearing package, and as it appears as if there was no evidence submitted to the Residential Tenancy Branch by the Tenant, I am satisfied that there is no evidence to consider from the Tenant.

A.Q. advised that the Landlord's evidence was posted to the Tenant's door on October 8, 2021 and he had pictures taken to corroborate service of this evidence. The Tenant stated that she did not receive this evidence. When assessing the positions of the parties, I am satisfied on a balance of probabilities that the Landlords' evidence was posted to the door on October 8, 2021. As such, this evidence is deemed to have been received on October 11, 2021. I have accepted this evidence and will consider it when rendering this Decision.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Notice to end tenancy, and the other claim was dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 3, 2021, that rent was established at an amount of \$2,450.00 per month, and that it was due on the first day of each month. A security deposit of \$1,225.00 was owed as per the tenancy agreement; however, the Landlords allege that this was not paid, and the Tenant alleges that it was paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

A.Q. advised that the Notice was served to the Tenant on June 23, 2021 by posting it to the Tenant's door and then by hand serving her. The Notice indicated that \$2,450.00 was owing on June 3, 2021 and that the effective end date of the tenancy was July 5, 2021. He testified that the Tenant provided post-dated cheques for the rent and the security deposit; however, the first cheques for June 2021 rent and the security deposit could not be deposited. He stated that the bank called and informed them that the account associated with the cheques did not exist, and he referenced documentary evidence from the bank that corroborated this information. He submitted that the Tenant was subsequently messaged over text about the rental arrears, but the Tenant ignored these messages. No rent has been paid by the Tenant since the start of the tenancy.

In addition to an Order of Possession for unpaid rent, the Landlords are also seeking a Monetary Order in the amount of **\$12,250.00**, which includes rental arrears for June 2021 to October 2021.

The Tenant advised that she does not have a copy of the cheques that the A.Q. was referring to. She stated that she has paid the rent and that after receiving the Notice, she had a conversation with the Landlords. She confirmed that she was informed that her cheques were not valid. She stated that she checked her account, and the money was withdrawn, but she did not have any proof of this. She submitted that despite the Landlords informing her of the invalid cheques, she did not attempt to pay any rent to the Landlords to cancel the Notice.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent or utilities when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once this Notice is received, the Tenant would have five days to pay the rent or utilities in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenant was served the Notice on June 23, 2021. According to Section 46(4) of the *Act*, the Tenant had 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Tenant was served the Notice on June 23, 2021, she must have paid the rent in full or disputed the Notice by June 28, 2021 at the latest. While the Tenant did not pay the amount owing on the Notice by this date, she disputed the Notice within the five-day time frame.

When reviewing the evidence and testimony before me, I have the Landlords' documentary evidence from the bank confirming that the account associated with the post-dated cheques does not exist and that those cheques could not be cashed. While

the Tenant advised that money for rent was withdrawn, it does not make sense that the Landlords would serve this Notice to end the tenancy during the first month of the tenancy had money actually been transferred. Furthermore, given the contradictory testimony and positions of the parties, I considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy. I found the Tenant's testimony to be vague, uncertain, unpersuasive, and her credibility to be lacking.

When weighing the totality of the evidence and testimony of the parties, I find that I prefer the Landlords' evidence on the whole. As such, I am satisfied that the Tenant did not pay the rent, and that she did not have authorization from the Landlords or a valid reason under the *Act* to withhold the rent. As such, I find that the Tenant breached the *Act* and jeopardized her tenancy.

As the Landlords' Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice. Consequently, I find that the Landlords are entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. This Order of Possession takes effect **two days** after service on the Tenant.

I also grant the Landlords a monetary award in the amount of **\$12,250.00** for the outstanding rental arrears.

Pursuant to Section 67 of the *Act*, I grant the Landlords a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlords

Item	Amount
Rental arrears for June 2021	\$2,450.00
Rental arrears for July 2021	\$2,450.00
Rental arrears for August 2021	\$2,450.00
Rental arrears for September 2021	\$2,450.00
Rental arrears for October 2021	\$2,450.00
Total Monetary Award	\$12,250.00

Conclusion

Based on the above, I grant an Order of Possession to the Landlords 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.

In addition, the Landlords are provided with a Monetary Order in the amount of **\$12,250.00** 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: October 25, 2021

Residential Tenancy Branch