



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

The Tenant applies to cancel a 10-Day Notice to End Tenancy pursuant to s. 46 of the *Residential Tenancy Act* (the “*Act*”) and for an order under s. 62 that the Landlord comply with the *Act*.

N.M., S.E., and T.P. appeared on behalf of the Landlord. The Tenant did not attend, nor did someone appear on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled at 11:00 AM. The hearing was conducted in the absence of the Tenant pursuant to Rule 7.3.

The parties affirmed to tell the truth during the hearing and were given a full opportunity to be heard, to present sworn testimony, question the other party, and to make submissions. I advised the parties of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Landlord indicated having served the 10-Day Notice to End Tenancy signed July 3, 2021 (the “10-Day Notice”) on the Tenant by posting it to the Tenant’s door on July 3, 2021. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act*. Pursuant to s. 90, I deem the Tenant to have been served with the 10-Day Notice on July 6, 2021.

The Landlord acknowledged receipt of the Tenant’s Notice of Dispute Resolution. I find that the Landlord was sufficiently served with the application in accordance with s. 71(2) of the *Act*.

The Landlord indicated serving their responding evidence on the Tenant by posting it to the Tenant's door on October 22, 2021. I find that the Landlord's evidence was served in accordance with s. 89 of the *Act*. Pursuant to s. 90, I deem the Tenant to have been served with the Landlord's evidence on October 25, 2021.

Preliminary Issue – Tenant's Application

The Tenant applies for an order that the Landlord comply with the *Act* and an order cancelling the 10-Day Notice. Pursuant to Rule 2.3, claims within an application must be sufficiently linked and, where they are not, unrelated claims may be dismissed with leave to reapply.

I find that the central issue in the application is whether the tenancy continues or not pursuant to the 10-Day Notice. Accordingly, I dismiss the Tenant's claim that the Landlord comply with the *Act* on the basis that it is not sufficiently related to the 10-Day Notice and may be moot if the tenancy ends. Should the tenancy continue, this portion of the Tenant's application will be dismissed with leave to reapply.

Preliminary Issue – Amending Style of Cause

At the outset of the hearing, I clarified with the Landlord's agents who, in fact, was the Landlord. The Landlord confirmed that the corporate Landlord, as listed in the tenancy agreement, is the correct Landlord. Accordingly, I amend the application pursuant to Rule 4.2 of the Rules of Procedure such that the style of cause reflects the corporate Landlord as listed in the tenancy agreement.

Issue(s) to be Decided

- 1) Whether the 10-Day Notice signed July 3, 2021 ought to be cancelled?
- 2) If not, is the Landlord entitled to an order for possession and an order for unpaid rent pursuant to s. 55?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord confirmed the tenancy began on January 1, 2021 and that rent, due on the first of each month, was \$1,650.00. The Landlord confirmed holding a security deposit of \$825.00 in trust for the Tenant and denied holding a pet damage deposit. A written tenancy agreement was provided as evidence confirming these details.

The Landlord confirmed issuing the 10-Day Notice on July 3, 2021 on the basis that the Tenant had failed to pay rent for the months of June and July 2021. The Landlord indicated that the Tenant paid rent for May 2021 on June 1, 2021. The 10-Day Notice indicates unpaid rent of \$3,300.00 as of July 1, 2021. The Landlord confirmed that the Tenant has not paid rent for the months of August, September, October, and November 2021.

The Landlord also provides a ledger indicating that total unpaid rent as of October 1, 2021 was \$8,275.00. Including unpaid rent of November 2021, the Landlord submits that the Tenant is in arrears in the amount of \$9,925.00.

The Landlord confirmed the Tenant continues to reside within the rental unit.

Analysis

The Tenant applies to cancel a 10-Day Notice signed July 3, 2021. Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. The *Act* proscribes a set of limited circumstances in which monies claimed by the Tenant can be deducted from, which include:

1. Where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2)).
2. The reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8)).

3. Where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)).
4. As ordered by the Director pursuant to ss. 65 and 72.

None of the above exceptions apply to the present circumstances. I find that the 10-Day Notice, which complies with the formal requirements of s. 52, is valid and enforceable. The 10-Day Notice is on an older version of form RTB-30. However, I do not find that the older version of the form is a sufficient defect to the notice. All the relevant information contained in the new form is present in the old for.

The Tenant's application to cancel the notice is, therefore, dismissed. Pursuant to s. 55(1), the Landlord is entitled to an order for possession.

Pursuant to s. 55(1.1) of the *Act*, if a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then the Director must grant an order for unpaid rent. In accordance with Policy Guideline 3, an order for unpaid rent is limited to rent owed during the tenancy and does not include compensation for an overholding tenant.

Where a tenant continues to reside in the rental unit and is unsuccessful in disputing a notice to end tenancy at the hearing, the tenancy ends on the date of the tenant's hearing as ordered by the Director in accordance with s. 68(2) of the *Act*.

I find that the Tenant owes the Landlord the following in unpaid rent:

Month	Rent Owed	Rent Paid	Difference
Due as set out in 10-Day Notice	-	-	-\$3,300.00
August 2021	\$1,650.00	\$0.00	-\$1,650.00
September 2021	\$1,650.00	\$0.00	-\$1,650.00
October 2021	\$1,650.00	\$0.00	-\$1,650.00
November 2021	\$1,650.00	\$0.00	-\$1,650.00
TOTAL OWED			\$9,900.00

The discrepancy between the amount I find for unpaid rent and the amount claimed is due to ledger indicating that the Tenant paid \$1,625.00 in rent on June 1, 2021. I accept the undisputed evidence of the Landlord's agents at the hearing and that the total

amount of rent owed as at July 1, 2021 was \$3,300.00, as set out in the 10-Day Notice. Accordingly, I order that the Tenant pay \$9,900.00 to the Landlord in unpaid rent. In partial satisfaction of this debt, the Landlord may retain the security deposit of \$825.00.

Conclusion

I dismiss the Tenant's application to cancel the 10-Day Notice signed July 3, 2021. Pursuant to s. 55(1), I grant the Landlord an order for possession. The Tenant shall give vacant possession of the rental unit to the Landlord no later than **two (2) days** after receiving the order.

As the tenancy is over, the Tenant's application under s. 62 that the Landlord comply with the *Act*, which was severed from this application, is dismissed without leave to reapply.

I find that the Tenant is in arrears of rent in the amount of \$9,900.00. In partial satisfaction of the outstanding rent, pursuant to s. 72(2) I order that the Landlord retain the security deposit of \$825.00. Accordingly, the total amount owed by the Tenant is as follows:

Item	Amount
Unpaid rent pursuant to s. 55(1.1)	\$9,900.00
Landlord's retention of the security deposit pursuant to s. 72(2)	-\$825.00
Total	\$9,075.00

Pursuant to s. 67 of the *Act*, I order that the Tenant pay **\$9,075.00** to the Landlord.

It is the Landlord's obligation to serve these orders on the Tenant.

If the Tenant does not comply with the monetary portion of this order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenant does not comply with the order for possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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: November 02, 2021

Residential Tenancy Branch