



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MT

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 (the "**Notice**") pursuant to section 46;
- more time to make an application to cancel the Notice pursuant to section 66;

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 10:00 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. The tenant and his counsel attended the hearing and was 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 tenant, counsel, and I were the only ones who had called into this teleconference.

The tenant testified he served the landlord by e-mail with the notice of dispute resolution form and evidence on September 15, 2021. The e-mail evidence uploaded by the landlord confirmed receipt of the notice. I find that the landlord was served with this package on September 15, 2021, at 4:06 p.m. in accordance with section 88 and 89 of the Act.

Preliminary Issues

The tenant confirmed that on August 25, 2021, at 12:50 p.m. he submitted a signed "Notice" to landlord advising them that he was vacating the apartment on September 30, 2021. The notice cannot be rescinded, so the tenancy will end. The tenant advised that he will be leaving the apartment effective December 31, 2021. Accordingly, I dismiss the tenant's application for an order to cancel the 10 Day Notice and the request for more time to cancel the notice, without leave to reapply.

Issues to be Decided

Is the tenant entitled to:

- 1) An order cancelling the 10 Day Notice to End Tenancy issued for unpaid rent or utilities pursuant to s.46(4);
- 2) Request for more time to cancel a notice pursuant to s. 66(1).

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenant, not all details of his submission and argument are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below.

The parties entered into a written fixed term tenancy agreement on February 1, 2020 that became a month to month tenancy agreement effective February 1, 2021. The fixed term rent was set at \$1850 per month but negotiated to \$1600 per month. Monthly rent was payable on the first of each month. The tenant paid the landlord a security deposit of \$925.00. The landlord still retains this deposit.

The tenant is a refugee. He returned to his native country to care for his dying father and after the death, came back to Canada and secured a rental accommodation. He did not have a job but used his small inheritance to pay his rent. By July 2021, he had exhausted his inheritance and was unable to find work because of COVID.

In July 2021 the tenant made application to Social Services and provided details of his circumstances to the landlord. He secured both a verbal and written agreement that he could pay \$935 in rent and hold the other portion of the rent in abeyance. The email from the Senior Property Manager uploaded into evidence confirms this agreement.

Almost immediately following the agreement, on August 11, 2021, the tenant was issued a 10 Day Notice to End Tenancy. The notice stated he must move out of the unit by August 23, 2021.

On August 25, 2021, the tenant sent a notice to the landlord stating that he was leaving the rental unit effective September 30, 2021.

Several organizations as well as his advocate attempted, unsuccessfully, to lobby the landlord on behalf of the tenant.

The tenant has secured other accommodations and will vacate the rental unit by December 31, 2021.

The tenant acknowledged that there is outstanding rent owed and states that he will pay but needs time/a reasonable payment schedule to be able to do so. He thinks the unpaid rent may total \$8200.00; however, a cheque in the amount of \$1850.00 was sent to the landlord and he does not know whether this amount has been deducted from the outstanding balance.

Analysis

The landlord issued a 10 Day Notice to End Tenancy for unpaid rent under s.46 of the Act. The Notice complies with s. 52 *[form and content of notice to end tenancy]* on August 11, 2021.

Section 46(1) states:

- (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.*

Prior to the date the 10 Day Notice was issued, the tenant had an agreement with the Senior Property Manager to “pay your first installment on July 21st at the office by debit. I agree that you will pay half of rent each month and the other half will be outstanding on your account and payable ASAP”. The vague wording in the email sent to the tenant by the Senior Property Manager about rent payment is confusing. It is unclear if the Senior Property Manager intended to defer partial rent payment for one month or the life of the tenancy.

Notwithstanding the above, as provided in “Preliminary Issues”, the tenant gave notice to end the tenancy to the landlord effective September 30, 2021. That notice cannot be rescinded and the tenant’s application to cancel the 10 Day Notice and his request for more time is dismissed without leave to reapply. Whatever agreement was in place between the tenant and the Senior Property Manager ended with the tenant’s Notice.

If a tenant files to dispute a notice for unpaid rent and the tenant’s application is dismissed, the arbitrator has the authority to issue an order of possession and a monetary order for unpaid rent to the landlord pursuant to s. 55 of the Act.

Section 55(1)(a) and (b) provides as follows:

- (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.*

Section 55(1.1) reads:

- (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.

Although there is no Application before me, in keeping with my authority under s. 55, I grant the landlord an Order of Possession effective December 31, 2021, by 1:00 p.m.

The *Act* also allows me the authority to grant a Monetary Order for unpaid rent. Despite this, I find there is insufficient information/facts available for me to grant the landlord a Monetary Order. The landlord has leave to apply for a Monetary Order for Rent and/or utilities for the Landlord with the security deposit applied to the claim

Conclusion

Pursuant to section 55 of the *Act*, **I grant** an Order of Possession to the Landlord effective at 1:00 p.m. on December 31, 2021. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord has leave to apply for a Monetary Order for Rent and/or utilities with the security deposit applied to the claim pursuant to s. 67 of the *Act*.

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: December 16, 2021

Residential Tenancy Branch