



Dispute Resolution Services

Page: 1

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

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:43 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30.

The landlords 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 Rules of Procedure [the "**Rules**"] stipulates that the hearing will commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may decide or dismiss the Application, with or without leave to re-apply.

Relying on *M.B.B v. Affordable Housing Charitable Association*, 2018 BSCS 2418, the landlord must still prove the grounds to end tenancy when a tenant does not appear to present their application to cancel the notice.

[27] I accept it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the grounds that M.B.B. had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

I decided the hearing would proceed in the absence of the tenant.

I note s. 55 of the *Act* requires that when a tenant applies 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, and/ or a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Based on the oral testimony from the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the landlord acknowledged service of the notice of dispute resolution package from the tenant.

The landlord confirmed that the tenant was served with the 10-Day Notice by having it posted to the door of the rental unit. The 10-Day Notice was posted on August 30, 2021, not August 31, 2021. The date submitted to the Residential Tenancy Branch file was a typographical error, entered incorrectly in the comments. I find that the landlord served the tenant with the 10-Day Notice in accordance with s. 88 of the *Act*.

Preliminary Issue #1- Date Correction

The landlord advised that the 10-Day Notice was posted on August 30, 2021, the date the 10-Day was issued not on August 31, 2021, as provided to the Residential Tenancy Branch file. I accept the landlord's undisputed testimony and find the 10-Day Notice was posted to the tenant's door on August 30, 2021.

Preliminary Issue #2-Application Dismissed

Rule #7.3 of the *Rules* provide as follows:

7.3 Consequences of not attending the hearing

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.

Further, Rules #2.5 details the evidence that must be submitted with an Application and Rule #7.4 summarizes what evidence may or may not be considered in the absence of a party to the dispute.

Rule 2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- *a detailed calculation of any monetary claim being made;*

- *a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and*
- *copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].*

Rule 7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Other than an initial application, the tenant failed to submit the above referenced documentation as per Rule 2.5 to support his request for additional time to make application to cancel the 10-Day Notice or in support of his application for an order to cancel the 10-Day Notice. Neither did he attend the hearing to present oral testimony as per Rule 7.4.

Accordingly, in the absence of attendance at this hearing by the applicant (tenant) or his agent, I order the tenant's application dismissed in its entirety, without leave to reapply.

Issues to be Decided

The issues to be determined based on the testimony and the evidence are:

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent?

The burden of proof is on the respondent/landlord to justify that the reason for the 10-Day Notice meets the criteria specified under s. 46 of the *Act*.

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord not all details of the landlords' submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The Residential Tenancy Branch Rules of Procedure, Rule 2.5 "Documents that must be submitted with an Application for Dispute Resolution" include:

- a detailed calculation of any monetary claim being made
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17

The tenant neither attend the hearing nor submitted documentation other than his application. The tenancy agreement was not provided.

The landlord submitted evidence consisted of a copy of the 10- Day Notice and a photo confirming service by posting the notice to the door of the tenant's rental unit. The landlord indicated that the 10-Day Notice was issued on August 30, 2021, on the basis that the Tenant had failed to pay rent since June 2021. At the time the 10-Day Notice was issued, the arrears equaled \$2100.00.

The landlord testified monthly rent is \$700.00 and is payable on the first of each month. The tenant currently owes \$5600 in back rent (8 months x \$700.00) for outstanding rent from June 2021 through January 2022.

At one point the tenant agreed to leave the residential unit but then was advised by another tenant to dispute the 10-Day Notice because eviction could not happen until after the hearing. The tenant then refused to pay rent and refused to leave.

The landlords are requesting an Order of Possession and a Monetary Order for the unpaid rent.

Analysis

As discussed in Preliminary Issue #2, I dismissed the tenant's application in its entirety without leave to reapply. Section 55 of the *Act* requires that I must decide if the landlord is entitled to an Order of Possession. Section 55 of the *Act* provides as follow

- 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 s. 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.

I find that the landlord's 10-Day Notice meets the formal requirements under s. 52 the *Act*. Specifically, the 10-Day Notice is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice and the grounds for the tenancy to end. I accept the undisputed evidence of the landlord that there was a rental arrear in the amount of \$2100 as of August 30, 2021, the date of the 10-Day Notice.

Accordingly, I find that this tenancy ends in accordance with the 10-Day Notice and the landlord is entitled to an Order of Possession pursuant to s 55. The tenant has been overholding since September 15, 2021, I thus issue an Order of Possession effective two (2) days after service.

I find that the tenant was obligated to pay monthly rent in the amount of \$700.00 on the first of each month for the rental unit. I accept the landlord's undisputed evidence that the tenant failed to pay the rent in breach of the tenancy agreement. I accept the evidence of the landlord that the total amount of arrears for this tenancy is \$5600.00. I therefore issue a monetary award in the landlord's favour for unpaid rent in the amount of \$5600.00 as at January 18, 2022, the date of the hearing, pursuant to s. 67 of the *Act*.

In accordance with s. 38 and the offsetting provisions of s. 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I dismiss the tenant's application in its entirety, without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$5600.00, allowing for recovery of the rent and to retain the security deposit for this tenancy. 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: January 18, 2022

Residential Tenancy Branch