



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, LRE

Introduction

On September 13, 2021 the Tenant applied for dispute resolution for an order cancelling the 10-Day Notice to End Tenancy Issued for Unpaid Rent issued by the Landlord (the “10-Day Notice”). Additionally, they applied for conditions on the Landlord’s right to enter, and the Landlord’s compliance with the legislation and/or the tenancy agreement.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 25, 2022. The Landlord attended the teleconference hearing; the Tenant did not attend.

The Landlord advised they did not receive notice of this hearing from the Tenant directly. Rather, the Residential Tenancy Branch contacted the Landlord on January 11, 2022 to remind the Landlord of the Tenant’s Application. The Landlord made submissions in time for the hearing and had the opportunity to present these items. They served their evidence to the Tenant in due course, as provided in their own evidence.

Preliminary Matter

The Tenant did not attend the hearing, although I left the teleconference hearing open until 11:15am to enable them to call in to this hearing scheduled for 11:00am. I confirmed the correct call-in number and participant codes were provided in the Notice of Hearing generated when they applied. I also confirmed throughout the duration of the call that the Tenant was not in attendance.

The *Residential Tenancy Branch Rules of Procedure* Rule 7.3 provides that if a party fails to attend the hearing, the Arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the Tenant's Application in its entirety, without leave to reapply.

Issues to be Decided

Is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the Act?

Background and Evidence

The Landlord provided a copy of the tenancy agreement between the parties, for the tenancy that started on November 1, 2019. The amount of rent was initially set at \$1,210, then reduced to \$1,160 in 2021. In the Landlord's written statement, they wrote: "This was to ease the financial restraints to the resident tenant. . ."

The Landlord provided a copy of the 10-Day Notice, issued September 6, 2021. This gave the Tenant the move-out date of September 16, 2021. This listed the failure by the Tenant to pay the monthly rent of \$1,160 for September 1, 2021. The Landlord provided a Proof of Service document that sets out they served the Tenant in person on September 6. The Proof of Service shows that a witness observed that transaction and signed to attest to that as fact.

The Landlord prepared a document to show the amount of rent outstanding, a Monetary Order Worksheet. The Tenant had not paid rent since August 2021. From September 2021 through to January 2022, this total amount of rent owing is \$5,800.

On the worksheet, the Landlord listed other monetary loss to them. This is a \$20 laundry fee the Tenant agreed to on a separate addendum to the tenancy agreement. This is also stated on the withdrawal agreement that the Tenant completed at the start of the tenancy for automatic bank withdrawal of rent. A fee of \$10 is charged for this each time a laundry payment is missed. This totals \$150.

The Landlord also charges a \$40 NSF fee and the Landlord added these for each missed rent payment month. This totals \$200.

Analysis

The *Act* s. 46(1) states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after a tenant receives the notice.

Following this, s. 46(4) states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

I am satisfied that when the Landlord issued the 10-Day Notice on September 6, 2021 the Tenant had an extant amount of rent owing. They did not pay the rent amount owing within 5 days. Because of this, and because the Tenant did not attend to speak to their Application in the hearing, I dismissed the Application above. The tenancy is ending.

Under s. 55 of the *Act*, when a tenant's Application to cancel a notice to end tenancy and I am satisfied the document complies with the requirements under s. 52 regarding form and content, I must grant a landlord an order of possession. On my review, I find that the 10-Day Notice complies with the requirements of form and content; therefore, the Landlord here is entitled to an Order of Possession.

The *Act* s.55(1.1) specifies that I must grant an order requiring the payment of the unpaid rent. For the purpose of granting repayment of unpaid rent, this is money that is due and owing during the tenancy. As of the date of the hearing, the Tenant still occupied the rental unit.

The record shows the Tenant did not pay the following months of October through to January at a reduced rent amount of \$1,160. In line with this, I award the Landlord \$5,800 with a Monetary Order for the rent amounts only.

The NSF fees and laundry charges are separate from rent and the Landlord must make a separate application to recover those amounts. This individual section of the *Act* allowing for recovery of the rent amounts to the Landlord does not provide for other money owing. For this reason, I make no award for laundry agreement amounts, or the NSF fee charged by the Landlord for each month. The Landlord must pursue those amounts by separate application.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the 10-Day Notice, without leave to reapply. I dismiss the other grounds on their Application, without leave to reapply.

I grant an Order of Possession to the landlord **effective TWO DAYS AFTER SERVICE BY THE LANDLORD**. The Landlord must serve this Order of Possession to the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it may be enforced as an Order of that court.

I order the Tenant to pay the landlord the amount of \$5,800, pursuant to s. 55(1.1) of the *Act*. I grant the Landlord a Monetary Order for this amount. The Landlord may file this Monetary Order in the Provincial Court (Small Claims) where it will be 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 s. 9.1(1) of the *Act*.

Dated: January 25, 2022

Residential Tenancy Branch