



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HABITAT FOR HUMANITY VANCOUVER ISLAND
NORTH and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 09, 2021 (the "Application"). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities (the "10 Day Notice")
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement

The Tenant appeared at the hearing eight minutes late. The Tenant mentioned calling a witness at the outset of the hearing; however, the Tenant chose not to call the witness during the hearing. K.M., J.W. and M.L. appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Tenant, K.M. and J.W. provided affirmed testimony.

During the hearing, K.M. confirmed the correct name of the Landlord which is reflected in the style of cause.

While waiting for the Tenant to appear at the hearing, I asked the Landlord's representatives to upload a complete copy of the 10 Day Notice because I only had pages 1 and 3. The Landlord's representatives did upload page 2 of the 10 Day Notice during the hearing.

The Tenant confirmed they are only disputing the Notice and not seeking a separate order that the Landlord comply with the Act, regulation and/or the tenancy agreement and therefore I dismiss this request without leave to re-apply.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. K.M. confirmed receipt of the hearing package from the RTB and confirmed the Landlord was prepared to proceed with the matter on the hearing date. K.M. confirmed receipt of the Tenant's evidence. The Tenant confirmed receipt of the Landlord's evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the 10 Day Notice be cancelled?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started April 15, 2021 and continues "on a year-to-year basis". Rent in the agreement is \$2,046.97 per month due on or before the first day of each month. K.M. testified that the Tenant did not pay a security deposit.

Term 24 of the tenancy agreement states:

The Rental agreement is for approximately one year until the Mortgage documents are completed. Each payment made will be applied to the mortgage...

Given term 24, and materials provided by the parties, I asked for the position of the parties on whether the *Residential Tenancy Act* (the "Act") applies and the RTB has jurisdiction in this matter. K.M. testified that the agreement between the parties is that, if the terms of the tenancy agreement are met, the Tenant will be offered a mortgage. K.M. testified that the tenancy is currently a traditional tenancy agreement covered by the Act. The Tenant agreed the tenancy is currently a traditional tenancy agreement covered by the Act and that the RTB has jurisdiction in this matter.

Prior to the hearing, pages 1 and 3 of the 10 Day Notice were submitted by both parties. Page 2 of the 10 Day Notice was not submitted by either party. Page 2 of the 10 Day Notice was submitted by K.M. and J.W. during the hearing.

K.M. testified that the 10 Day Notice was posted to the door of the rental unit and sent to the Tenant by email September 07, 2021. K.M. testified that they understood that all three pages of the 10 Day Notice were served on the Tenant but perhaps they were not.

The Tenant looked through their materials during the hearing and testified that they do not have page 2 of the 10 Day Notice. The Tenant testified that they do not recall receiving page 2 of the 10 Day Notice. The Tenant testified that they received the 10 Day Notice attached to their door September 07, 2021. The Tenant checked their email during the hearing, confirmed receiving the 10 Day Notice by email and testified that the 10 Day Notice sent does not include page 2.

Page 2 of the 10 Day Notice states that the Tenant failed to pay \$1,735.00 in rent due September 01, 2021.

The parties agreed rent was \$1,735.00 per month at the time the 10 Day Notice was issued.

K.M. testified that the Tenant did not pay September rent and this is reflected on the 10 Day Notice.

The Tenant agreed they did not pay September rent and testified that they had hoped the Landlord would agree to a lower rent amount because the Tenant had lost their job.

Analysis

I am satisfied the *Act* applies to this matter given the parties agreed on this.

Sections 46, 52 and 55 of the *Act* state:

46 (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.

(2) A notice under this section **must comply with section 52** [form and content of notice to end tenancy].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution...

52 In order to be effective, a notice to end a tenancy must be in writing and **must**

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], **state the grounds** for ending the tenancy...
- (e) when given by a landlord, **be in the approved form**.

55 (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.

(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.

The 10 Day Notice was issued pursuant to section 46 of the *Act*.

I am satisfied the Tenant was served with pages 1 and 3 of the 10 Day Notice on September 07, 2021 and that the Tenant received pages 1 and 3 of the 10 Day Notice on this date.

The Tenant filed the Application September 09, 2021, within time pursuant to section 49(4)(b) of the *Act*.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the validity of the 10 Day Notice.

I am not satisfied based on the evidence provided that the Tenant was served with page 2 of the 10 Day Notice for the following reasons. Prior to the hearing, the Tenant uploaded a letter from the Landlord and the 10 Day Notice which does not include page 2. Prior to the hearing, the Landlord uploaded an evidence package which includes the 10 Day Notice and this copy does not include page 2. K.M. acknowledged that it is possible page 2 of the 10 Day Notice was not served on the Tenant. The Landlord has not provided compelling evidence that page 2 of the 10 Day Notice was served on the Tenant. The Tenant looked through their materials during the hearing and testified that they do not have page 2 of the 10 Day Notice. The Tenant checked their email during the hearing, confirmed receiving the 10 Day Notice by email and testified that the 10 Day Notice sent does not include page 2. I found the testimony of the Tenant reliable and credible throughout the hearing and I accept their testimony about the 10 Day Notice missing page 2.

I find the 10 Day Notice issued to the Tenant does not comply with section 52 of the *Act* because it only included pages 1 and 3. Page 2 of the 10 Day Notice is the page that outlines the grounds for the Notice and therefore I find the 10 Day Notice issued to the Tenant does not state the grounds for ending the tenancy. Further, the 10 Day Notice issued to the Tenant is not on the approved form because the approved RTB form includes three pages and only two of these pages were issued to the Tenant.

In the circumstances, I find the 10 Day Notice does not comply with sections 46(2) and 52 of the *Act*. Given this, I find the 10 Day Notice issued to the Tenant is not an

effective notice to end tenancy pursuant to section 52 of the *Act* and I cancel the 10 Day Notice. Given this, the dispute of the 10 Day Notice is granted. The Landlord is not entitled to an Order of Possession based on the 10 Day Notice because the Tenant's dispute has been granted and the 10 Day Notice does not comply with section 52 of the *Act*.

I also note that the Landlord is not entitled to a monetary order for unpaid rent pursuant to section 55(1.1) of the *Act* because the Tenant's dispute of the 10 Day Notice is granted, the 10 Day Notice is cancelled and the 10 Day Notice does not comply with section 52 of the *Act*.

The Application is granted. The 10 Day Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Conclusion

The Application is granted. The 10 Day Notice is cancelled. The tenancy will continue until otherwise ended in accordance with 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 *Act*.

Dated: January 27, 2022

Residential Tenancy Branch