



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPU FFL
For the tenant: CNC-MT, CNR-MT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties, seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 3, 2021 (2nd 10 Day Notice) and to recover the cost of the filing fee. The tenant applied to cancel both a 10 Day Notice and a 1 Month Notice and for more time to dispute both Notices.

The tenant and the landlord attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing and make submissions to me.

Both parties confirmed receiving the documentary evidence package from the other party prior to the hearing, and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the Act. I have reviewed all evidence before me that met the requirements of the Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. If any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- Should the 1 Month Notice be cancelled or upheld?
- Should the tenant be granted more time to apply to cancel either Notice?
- Is the landlord entitled to the recovery of the cost of the filing fee?

Background and Evidence

There was no copy of the tenancy agreement submitted in evidence. The parties agreed that a fixed-term tenancy began in September 2020 and after 6 months reverted to a month-to-month tenancy. The parties also agreed that the monthly rent is \$950.00 plus 1/3 of utilities was due on the first day of each month. The tenant paid a security deposit of \$475.00 at the start of the tenancy, which the landlord continues to hold.

A copy of one 10 Day Notice was submitted in evidence although both parties confirmed a second 10 Day Notice dated July 31, 2021 (1st 10 Day Notice) was also served. The tenant confirmed that they received the 1st 10 Day Notice on July 31, 2021 as it was posted on that tenant's door that date and the tenant confirmed receiving the 1st 10 Day Notice on July 31, 2021. The tenant did not file their application to dispute the 1st 10 Day Notice until August 23, 2021. The tenant stated that they did not apply to dispute the 1st 10 Day Notice until August 23, 2021 as they did not read the documents so were not aware of the deadline of 5 days from July 31, 2021 to dispute the 1st 10 Day Notice.

The 2nd 10 Day Notice dated October 3, 2021 was also reviewed and the tenant confirmed having received the 2nd 10 Day Notice on October 3, 2021 and has not disputed the 2nd 10 Day Notice.

The landlord testified that the tenant eventually paid October 2021 rent late and continues to owe \$275.00 for November 2021 rent, and still owes \$475.00 for December 2021 rent and \$475.00 for January 2022 rent for a total rent arrears owing of \$1,225.00.

The tenant first stated that they owed \$275.00 for November 2021 rent, and had paid December 2021 and January 2022 rent. The tenant first stated that they paid December 2021 rent on December 22, 2021 and paid January 2022 rent on December 15, 2021. The tenant then changed their testimony four more times during the hearing by changing the dates that December and January rent were paid and when reminded that the parties had affirmed to tell the truth, the tenant eventually admitted that they did not pay January 2022 rent.

The parties were advised that I did not find the tenant to be credible due to the tenant providing five different versions of whether rent was paid and on what dates, which I will address below.

There is no dispute that the 2nd 10 Day Notice was not disputed by the tenant and that the 1st 10 Day Notice was disputed on August 23, 2021 even though the 1st 10 Day Notice was confirmed as having been dated and received on July 31, 2021.

The rental unit continues to be occupied. The landlord seeks an order of possession, unpaid rent and the filing fee. The landlord was advised that I could not consider unpaid utilities at this proceeding as the landlord has not applied for unpaid utilities.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

I find the tenant not to be credible as described above as the tenant changed their testimony a total of five times during the 35-minute hearing. As a result, I find the landlord to be credible as their testimony did not change during the hearing.

I also find that the tenant not reading the 1st 10 Day Notice does not justify an extension of time to make an application to dispute the 1st 10 Day Notice under the Act.

In addition, although the effective vacancy date was not listed on the 1st 10 Day Notice, I find that pursuant to sections 68(1)(a) and 68(1)(b) of the Act that the tenant ought to have known that the effective vacancy date was 10 days after July 31, 2021, which I correct to August 10, 2021. Section 66(3) of the Act applies and states:

Director's orders: changing time limits

66(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

[emphasis added]

As the corrected effective vacancy date was August 10, 2021 and the tenant applied on August 23, 2021, I find that I am barred at law from extending the effective vacancy date until August 23, 2021 as that date is well beyond the August 10, 2021 corrected effective vacancy date. As a result, I dismiss the tenant's application for an extension of time to dispute the 1st 10 Day Notice.

Order of Possession – Pursuant to section 55 of the Act, once I dismissed the tenant's application to cancel the 10 Day Notice and I upheld the landlord's 10 Day Notice, I must grant the landlord an order of possession. Therefore, based on the above, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on August 10, 2021, which is the corrected effective vacancy date of the 1st 10 Day Notice. Sections 55(1) and 55(1.1) of the Act also apply and state:

Order of possession for the landlord

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.

55(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.**

[emphasis added]

Given the above and that I did not find the tenant to be credible, and considering that I found the landlord to be credible, I grant the landlord **\$1,225.00** in unpaid rent as follows:

- November 2021 unpaid rent portion of \$275.00
- December 2021 unpaid rent portion of \$475.00
- January 2022 unpaid rent portion of \$475.00

I find the 2nd 10 Day Notice and the 1 Month Notice is moot and do not need to be considered as the tenancy ended based on the 1st 10 Day Notice.

As the landlord's application had merit, I grant the landlord the recovery of their **\$100.00** filing fee pursuant to section 72 of the Act. As a result, I grant the landlord a monetary order for **\$1,325.00** as a result pursuant to section 68 of the Act.

Conclusion

The tenant's application is dismissed, without leave to reapply, due to insufficient evidence.

The landlord's application is successful. The landlord has been granted an order of possession effective two (2) days after service on the tenant. The tenancy ended on August 10, 2021. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has been granted a monetary order in the amount of \$1,325.00 as noted above. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenant is cautioned that they can be held liable for all costs related to the enforcement of the monetary order and order of possession.

This decision will be emailed to the parties as noted above. The order of possession and monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 5, 2022

Residential Tenancy Branch