



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PCPM LTD. (AGENT FOR COUNTESS GARDENS INC.) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR-MT LRE

Introduction

This hearing was conducted as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 8, 2021 (10 Day Notice), for more time to make an application to dispute a 10 Day Notice and for an order to set conditions on the landlord's right to enter the rental unit, site or property. The filing fee was waived for this application.

The tenant and an agent for the landlord, NA (agent) attended the teleconference hearing. The hearing process was explained, evidence was reviewed, and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to the hearing, all of which has been reviewed, to present affirmed testimony and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) and testimony provided.

The tenant claims they did not receive documentary evidence (Package) from the landlord. The agent provided a registered mail tracking number during the hearing, which has been included on the style of cause for ease of reference. The agent testified that the tenant's documentary evidence was mailed on February 8, 2022 via registered mail. According to the online Canada Post registered mail website, the Package is awaiting pick up by the tenant. Pursuant to section 90 of the Act, documents sent via registered mail are deemed served 5 days after they are mailed. I therefore find the tenant was deemed served as of February 13, 2022, and that failure to pick up the Package does not override the deemed service provision of the Act. Therefore, I find the tenant was sufficiently served with the landlord's documentary evidence.

Regarding the evidence from the tenant, the agent stated that they received no documentary evidence from the tenant. The tenant testified that their evidence package (Package) was dropped into the drop box inside the building and was not personally served or sent via registered mail. I am not satisfied with this method of service as I find the tenant provided insufficiently details of service to convince me that the Package was sufficiently served in accordance with the Act. Furthermore, the tenant did not present any documentary evidence during the hearing that was relevant to this proceeding, nor did the tenant have a copy of the 10 Day Notice before them during the hearing.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB 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. In addition, the parties were informed that 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 would be emailed to them.

Issues to be Decided

- Has the tenant provided sufficient evidence to support extenuating the time to dispute a 10 Day Notice under the Act?
- If no, is there any other relevant matters to consider in this application?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on August 1, 2020, and reverted to a month-to-month tenancy after July 31, 2021. Monthly rent in the amount of \$1,175.00 is due on the first day of each month. The tenant paid a security deposit of \$587.50 and a pet damage deposit of \$587.50 at the start of the tenancy, which the landlord continues to hold.

The parties agree that a 10 Day Notice dated November 8, 2021, was posted to the tenant's door on November 11, 2021. The tenant disputed the 10 Day Notice on November 23, 2021, which is beyond the 5-day timeline provided under section 46 of

the Act. According to the 10 Day Notice, \$1,310.00 was owed as of November 1, 2021. The effective vacancy date listed on the 10 Day Notice was November 21, 2021.

The landlord also submitted a Notice of Rent Increase Form dated September 21, 2021, that supports that monthly rent was increased in accordance with the Act as of January 1, 2022, from \$1,175.00 to \$1,192.00, which is a \$17.00 increase. That amount is within the 1.5% permitted rent increase for 2022 under the Act. The landlord provided the following total of what was owing including any payments made by the tenant as follows:

Monthly Breakdown of Rent on the 10 Day Notice to End Tenancy				
Month and date rent was due	Rent amount owing	Amount of partial payment(s) received	Date of partial payment(s)	Balance rent owed
Nov 1 / 2021 <small>example Jan 1, 2019</small>	\$1310.00 <small>(1175.00 rent + 135.00 previous)</small>	\$200.00 <small>example \$300</small>	Nov 11 / 2021 <small>example Jan 1, 2019</small>	\$1110.00 <small>example \$600</small>
Dec 1 / 2021	\$2285.00 <small>(1175.00 rent + 1110.00 previous)</small>	\$200.00	Dec 17 / 2021	\$2085.00
Jan 2 / 2022	\$3277.00 <small>(1192.00 rent + 2085.00 previous)</small>	\$200.00	JAN 03 / 2021	\$3077.00
Feb 1 / 2022	\$4269.00 <small>(1192.00 rent + 3077.00 previous)</small>	0	—	\$4269.00
Attach additional page(s), if necessary. Amount listed for unpaid rent on the 10 Day Notice to End Tenancy				\$ \$4269.00
Amount paid since the 10 Day Notice to End Tenancy was issued				\$ \$0

The tenant claims that a \$200.00 subsidy cheque was provided for February 2022; however, the agent indicated that they have not received or deposited any \$200.00 on behalf of the tenant and that the tenant owes a total of \$4,269.00 as of the date of the hearing in unpaid rent/rent arrears.

The tenant stated that they are on income assistance and can not afford the rent as it stands. The reason why the tenant stated they did not apply sooner than November 23, 2021, was that they were “looking for work.”

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice to End Tenancy for Unpaid Rent – The tenant did not dispute the 10 Day Notice within the 5-day timeline provided for under section 46 of the Act, which began on November 11, 2021, the day that the tenant received the 10 Day Notice posted

on their door. The effective vacancy date listed on the 10 Day Notice was November 21, 2021. Section 66(3) of the Act applies and states:

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]

I find that section 66(3) prevents me from extending the time to dispute the 10 Day Notice until November 23, 2021 as the effective vacancy date was November 21, 2021. Therefore, I find I am barred at law from doing so. Therefore, as the tenant confirmed they were served with the 10 Day Notice on November 11, 2021, I find the tenancy ended on November 21, 2021.

Furthermore, section 26 of the Act requires that tenant pay rent on the day that it is due in accordance with the tenancy agreement whether or not the landlord complies with the Act. Therefore, based on the above, I find the 10 Day Notice issued by the landlord to be **valid and is upheld** as the tenant failed to pay rent when it was due. Section 46 of the Act states that if a tenant fails to dispute a 10 Day Notice within 5 days after it is received, the tenant is presumed under the Act to have accepted the 10 Day Notice and that the tenancy ends on the effective date of the 10 Day Notice and must vacate the rental unit by that date. In the matter before me the effective vacancy date was November 21, 2021. Given that I am barred at law from extending this date until November 23, 2021, **I dismiss** the tenant's application due to insufficient evidence, without leave to reapply.

Section 55(1.1) of the Act applies and states:

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.**
[emphasis added]

Based on the above and as the effective vacancy date has already passed and considering that I find the 10 Day Notice was signed and dated and complies with section 52 of the Act, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant.

As the tenancy ended on November 21, 2021, I dismiss the remainder of the tenant's application as it is now moot, without leave to reapply.

I must grant a monetary order to the landlord for the unpaid rent and as such, I grant the landlord **\$4,269.00** for unpaid rent as described in the table provided above by the landlord.

Conclusion

The tenant's application is unsuccessful and is dismissed without leave to reapply.

The tenancy ended on November 21, 2021. The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

The landlord is granted a monetary order in the amount of \$4,269.00 for unpaid rent/rent arrears. Should enforcement be necessary, the landlord must first serve the tenant with the monetary order along with a demand for payment letter. The landlord may then file the monetary order in the Provincial Court (Small Claims Division).

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

This decision will be emailed to both parties.

The order of possession and the 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: February 25, 2022

Residential Tenancy Branch