



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to cancel a Notice to End Tenancy for Unpaid Rent.

The female Tenant stated that on October 16, 2021 the Dispute Resolution Package was personally served to the Landlord.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter #1

With the consent of both parties, the Application for Dispute Resolution was amended to reflect the correct names of the Tenants, as they were provided at the hearing.

Preliminary Matter #2

The Tenants were advised on several occasions that this hearing was limited to the issue on the Application for Dispute Resolution, which was whether the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities should be set aside.

The Tenants were advised on several occasions that I would not be discussing the return of personal property at these proceedings.

Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be set aside?

Background and Evidence

The Landlord and the Tenant agree that the tenancy began in May of 2021 and that the Tenants agreed to pay rent of \$1,900.00 by the first day of each month.

The Landlord and the Tenants agree that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was personally served to the male Tenant, which declared that the rental unit must be vacated by October 12, 2021. The Interpreter for the Landlord stated that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was served on October 02, 2021 and the male Tenant stated that it was served on October 04, 2021.

The Interpreter for the Landlord stated that when this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was served, the Tenants owed \$1,900.00 in rent for September and \$1,900.00 in rent for October of 2021. The male Tenant stated that when this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was served, the Tenants owed \$1,900.00 in rent for October of 2021.

The male Tenant stated that they were unable to pay their rent for October when it was due because their bank account had been frozen and their bank was unable to send the payment to the Landlord's email address. The male Tenant stated that they did not contact the Landlord by email to arrange an alternate form of rent payment for October. The Interpreter for the Landlord stated that the Landlord did not change his email

address and that the Tenants made no effort to contact the Landlord, via email, regarding the rent for October of 2021.

The male Tenant stated that the Landlord moved from the upper portion of the residential complex so the Tenants were unable to pay their rent directly to the Landlord. The Interpreter for the Landlord stated that the Landlord has not moved from the residential complex. The parties both agree that the service address for the Landlord on the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is at the same residential property.

The male Tenant stated that they still have property at the rental unit and that they periodically accessed the unit until February 11, 2022. He stated they were no longer able to access the unit after February 11, 2022, as the Landlord locked the gate on the driveway.

The Interpreter for the Landlord stated that the gate at the driveway was not, and cannot be, locked.

The Landlord and the Tenants agree that no rent has been paid for any period after October 01, 2021.

Analysis

On the basis of the undisputed evidence, I find that the Tenants were required to pay rent of \$1,900.00 by the first day of each month and that they did not pay rent when it was due on October 01, 2021.

Section 26(1) of the *Residential Tenancy Act (Act)* stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent. As no evidence was presented to establish that the Tenants were not obligated to pay rent on October 01, 2021 or that they have paid their rent for that month, I find that they still owe \$1,900.00 in rent for October of 2021.

Section 46(1) of the *Act* stipulates that 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. As the Tenants did not pay rent when it was due on October 01, 2021, I find that the Landlord

had the right to serve the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46(1) of the *Act*.

Regardless of whether the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was personally served to the Tenant on October 02, 2021, as the Landlord contends, or on October 04, 2021, as the Tenants contend, I am satisfied that this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was received by the Tenants by October 04, 2021 at the latest.

Section 46(4)(a) of the *Act* stipulates that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect. As the Tenants have not paid the overdue rent from October of 2021, I find that this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities remains in full force and effect. I therefore dismiss the Tenants' application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

In reaching this conclusion I have placed little weight on the Tenants' submission that their bank was unable to send the payment to the Landlord's email address. Even if this was true, I find that the Tenants had an obligation to contact the Landlord and arrange an alternate method of payment. On the basis of the undisputed testimony, I find that the Tenants made no effort to communicate with the Landlord regarding this payment via the Landlord's email, which remained active, or at his residence, which is above the rental unit.

Even if the Tenants believed the Landlord was no longer living above them in October, which the Landlord disputes, the Tenants could have made some effort to contact the Landlord by leaving a message at his door or by mailing something to his address.

Section 55(1) of the *Act* stipulates that 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 the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Section 55(1.1) of the *Act* stipulates that if tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities the director must grant to the landlord an order requiring the payment of the unpaid rent if the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I grant the Landlord an monetary Order, pursuant to section 55(1.1) of the *Act*, for unpaid rent from October of 2021, in the amount of \$1,900.00.

I am not awarding Landlord compensation for unpaid rent for September of 2021, as the Tenants do not acknowledge that rent is overdue from that month. As there is a dispute about whether that rent is owed, I find the Landlord should be given the opportunity to present evidence of that debt. I therefore am not determining if rent is due for that month and the Landlord retains the right to file an Application for Dispute Resolution seeking compensation for unpaid rent from September of 2021.

Section 55(1.1) of the *Act* does not grant me the authority to award compensation for unpaid rent for any period after the effective date of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. As such, I am not determining if rent is due for any period after October 30, 2021. The Landlord retains the right to file an Application for Dispute Resolution seeking compensation for unpaid rent from any period after October 30, 2021.

Conclusion

I grant the Landlord an Order of Possession that is effective **two days after it is served upon the Tenants**. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I grant the Landlord a monetary Order of \$1,900.00, pursuant to section 55(1.1) of the *Act*. In the event the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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: February 17, 2022

Residential Tenancy Branch