



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

On December 31, 2021, the Tenants filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued December 22, 2021. The matter was set for a conference call.

Both Tenants and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The hearing process was explained, and the parties were provided with an opportunity to ask questions about the hearing process.

The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Should the Notice issued on December 22, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession and a monetary order for the outstanding rent?

Background and Evidence

The Landlord testified that this tenancy began late summer 2021. Rent in the amount of \$1,100.00 is to be paid by the first day of each month.

The Landlord testified that they served the 10-Day Notice to the Tenants on December 22, 2021, by posting the Notice to the front door of the rental unit. The 10-Day Notice recorded an effective date of January 1, 2022, and an outstanding rent amount of \$1,562.50.

The Landlord also testified that the Tenants had not paid the outstanding rent on the Notice for November and December 2021 and that they had not paid the rent for January and February 2022.

The Tenants testified that they had not paid the rent, as the Landlord had not completed work on the rental property as agreed, which had led to a dispute in which the Landlord told them not to come near them again.

The Tenants were asked if they had made any attempt to pay the rent for this tenancy by other means; mail or bank transfer. The Tenants responded that they had made no attempt to pay the rent since their dispute with the Landlord.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute

Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

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.

(5) *If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant*

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the rental unit to which the notice relates by that date.

I accept the testimony of the Landlord, that they posted this Notice to the door of the rental unit on December 22, 2021. I find that pursuant to section 90 of the Act, the Tenants were deemed to have received the Notice on December 25, 2021, three days after it had been posted to the front door of their rental unit. Accordingly, the Tenants had until December 30, 2021, to file to dispute this Notice. I have reviewed the Tenants' application for Dispute Resolution, filed with the Residential Tenancy Branch, and noted that the Tenants filed their application of December 31, 2021, which is outside the statutory time limit.

Due to not filing within the statutory time limit, I find that the Tenants were conclusively presumed to have accepted the Notice and that the tenancy would end in accordance with that Notice.

Additionally, I accept the agreed-upon testimony of both parties that the Tenants have not paid the outstanding rent as stated on the 10-Day Notice within the required five days. Therefore, I find that the Tenants are also in breach of section 26 of the *Act* by not paying the rent in accordance with the tenancy agreement.

For the above reasons, I dismiss the Tenants' application to cancel this Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

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.*

.....

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],

- (a) grant an order of possession, and*
- (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*

I have reviewed the 10-Day Notice to End Tenancy, and I find the 10-Day Notice complies with section 52 of the *Act*. As I have dismissed the Tenants' application, pursuant to section 55 of the *Act*, I must grant the Landlords an order of possession to the rental unit and a monetary order for the outstanding rent.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective two days after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Landlord is entitled to a monetary award for the outstanding rent for this tenancy, in the amount of \$3,762.50, consisting of \$426.50 for November 2021, \$1,100.00 for December 2021, \$1,100.00 for January 2022 and \$1,100.00 for February 2022.

Conclusion

I grant an **Order of Possession** to the Landlord effective **two days** after service of this Order on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the Landlord a **Monetary Order** in the amount of **\$3,762.50**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 7, 2022

Residential Tenancy Branch