



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, RR, RP

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for a rent reduction, and for an Order requiring the Landlord to make repairs.

The Tenant stated that on January 26, 2022 the Dispute Resolution Package was sent to the Landlord, via text message. The Tenants submitted no evidence to corroborate the testimony that hearing documents were sent to the Landlord by text message.

The Landlord stated that he received text messages from the Tenant regarding these proceedings, but he did not receive hearing documents from the Tenants. He stated that he contacted the Residential Tenancy Branch and the Residential Tenancy Branch provided him with a copy of the Notice of Hearing, which enabled him to join the teleconference.

The Landlord stated that he is willing to proceed with the hearing, as the information provided by the Residential Tenancy Branch was sufficient for him to respond to the claims being made by the Tenants. As the Landlord agreed to proceed with the hearing, the hearing proceeded in spite of the absence of evidence that corroborates the Tenant's testimony that hearing documents were served to the Landlord by text message.

On January 18, 2022 the Tenants submitted a copy of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities to the Residential Tenancy Branch. The Tenant

stated that this document was served to the Landlord with the Dispute Resolution Package on January 26, 2022. The Landlord denies being served with this document as evidence for these proceedings.

In the absence of clear evidence that the Landlord received the Tenants' evidence, the parties were advised that the Tenants' evidence was not being accepted as evidence, that the hearing would proceed, that the Tenant could discuss the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities during the hearing, and that I would not be viewing the Notice during the hearing. The parties were advised that if, at the end of the hearing, the Tenant believed I needed to view the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, the Tenant could request an adjournment for the purposes of re-serving that evidence to the Landlord.

At the end of the hearing the Tenant stated that she did not require an adjournment for the purposes of re-serving the Tenants' evidence. The Tenant's documentary evidence was, therefore, not considered during this adjudication.

On March 14, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on March 14, 2017. The Tenant stated that mail is not delivered to their rental unit and the Tenants did not, therefore, receive notice of registered mail sent to the unit.

In the absence of evidence that the Tenants received the Landlord's evidence, the parties were advised that the Landlord's evidence was not being accepted as evidence, that the hearing would proceed, that the Landlord could discuss his evidence during the hearing, and that I would not be viewing the Landlord's evidence during the hearing. The parties were advised that if, at the end of the hearing, the Landlord believed I needed to view his evidence, he could request an adjournment for the purposes of re-serving that evidence to the Tenants.

At the end of the hearing the Landlord stated that he did not require an adjournment for the purposes of re-serving the Tenants' evidence. The Landlord's documentary evidence was, therefore, not considered during this adjudication.

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

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenants identified several issues in dispute on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

The most urgent issue in dispute in this Application for Dispute Resolution is possession of the rental unit and I will, therefore, only consider issues related to that matter, which is the Tenant's application to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

The remaining issues are dismissed, with leave to re-apply, as they are not sufficiently related to possession of the rental unit.

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 2020 and that the Tenants agreed to pay rent of \$1,300.00 by the first day of each month.

The Landlord and the Tenant agree that on January 06, 2022 the rent was in arrears by \$2,550.00 and that none of this outstanding amount has been paid. The parties agree that the Residential Tenancy Branch did not grant the Tenants the right to withhold any of the outstanding rent and that the Tenant did not have the right to withhold rent because of emergency repairs made by the Tenant.

The Landlord stated that on January 06, 2022 a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the door of the rental unit. The Tenant stated

that the Tenants received the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on January 06, 2022.

The Landlord and the Tenant both stated that they had a copy of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities with them during the hearing. They agreed that:

- The Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is a notice created by the Residential Tenancy Branch;
- The Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is dated January 06, 2022;
- The Ten Day Notice to End Tenancy for Unpaid Rent or Utilities names both Tenants, although the spelling of the male Tenants name on the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is slightly different that the spelling on the Application for Dispute Resolution;
- The Ten Day Notice to End Tenancy for Unpaid Rent or Utilities declares that the rental unit must be vacated by January 20, 2022;
- The Ten Day Notice to End Tenancy for Unpaid Rent or Utilities gives the address of the rental unit; and
- The Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is signed by the Landlord.

Analysis

On the basis of the undisputed evidence, I find that the Tenants were required to pay rent of \$1,300.00 by the first day of each month and that on January 06, 2022 rent of \$2,550.00 was outstanding.

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. On the basis of the undisputed evidence, I find that the rent that was due on January 06, 2022 is still outstanding.

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 ten days after the date the tenant receives the notice.

As the Tenants had not paid all of the rent that was due prior to January 06, 2022, 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*.

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 of \$2,550.00, 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.

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.

On the basis of the undisputed testimony regarding the content of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities complies with section 52 of the *Act*. 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*, in the amount of \$2,550.00, for the rent that was overdue on January 06, 2022.

I am unable to grant compensation, pursuant to section 55(1.1) of the *Act* for rent that accrues after the effective date of the Ten Day Notice to End Tenancy for Unpaid Rent

or Utilities. The Landlord retains the right to file an Application for Dispute Resolution seeking compensation for unpaid rent/lost revenue that has accrued since January 06, 2022.

Conclusion

I grant the Landlord an Order of Possession that is effective on March 31, 2022. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I grant the Landlord a monetary Order of \$2,550.00. 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: March 24, 2022

Residential Tenancy Branch