



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

<u>File No. 310060581:</u>	CNR
<u>File No. 310061960:</u>	OPR

Introduction

The Tenant M.J. applies to cancel a 10-Day Notice to End Tenancy signed January 13, 2022 (the “10-Day Notice”) pursuant to s. 46 of the *Residential Tenancy Act* (the “Act”).

The Landlord brings a cross-application against the co-tenants for an order for possession pursuant to s. 55 of the *Act* after issuing the 10-Day Notice.

M.B. appeared as agent for the Landlord. The Tenants did not appear, nor did someone appear on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenants did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord’s agent affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord’s agent confirmed that he was not recording the hearing. I further advised that the proceedings are recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent advised that the 10-Day Notice was served on the Tenants by way of personal service on January 13, 2022. The Landlord’s agent further advised that the 10-Day Notice was served via registered mail sent on the same date. The Landlord provides a proof of service form confirming personal service. I find that the 10-Day

Notice was served in accordance with s. 88 of the *Act* and was received by the Tenants on January 13, 2022.

The Landlord's agent further advised that the Notice of Dispute Resolution for the application was originally served by way of registered mail sent on February 11, 2022, which included the Landlord's initial evidence. The hearing had been scheduled for April 19, 2022 but had been rescheduled to today's date by the Residential Tenancy Branch, which prompted a second Notice of Dispute Resolution being issued to the Landlord on April 20, 2022. The Landlord's agent advised that the Notice of Dispute Resolution for the rescheduled hearing was posted to the Tenant's door on April 21, 2022, along with some updated evidence comprising letters issued after the initial evidence was served.

I find that the Landlord's Notice of Dispute Resolution and initial evidence was served in accordance with s. 89 of the *Act* by way of registered mail sent on February 11, 2022. Pursuant to s. 90 of the *Act*, I deem that the Tenants received the Notice of Dispute Resolution and initial evidence on February 16, 2022.

With respect to the second Notice of Dispute Resolution for the rescheduled hearing, I am satisfied that the Landlord served the Notice of Dispute Resolution as soon as was practicable under the circumstances and that the rescheduling was due to circumstances out of the control of the parties. Accordingly, I find that the second Notice of Dispute Resolution was sufficiently served in accordance with s. 71(2)(b) of the *Act*.

However, the Landlord's additional evidence served on April 21, 2022 was not served within the proscribed time-limits imposed on applicants or respondents within the Rules of Procedure, being 14-days and 7-days respectively. Given that the evidence was not served within the time-limits imposed by the Rules of Procedure, I do not include it into the record.

The Landlord's agent acknowledged receiving the Tenant's application and raised no objections with respect to its service. Though the obligation to satisfy me of service rests with the Applicant Tenant, I am satisfied that the Tenant's application was served on the Landlord based on its acknowledge receipt. I find that the Tenant's application was sufficiently served on the Landlord in accordance with s. 71(2) of the *Act*.

Issue(s) to be Decided

- 1) Should the 10-Day Notice be cancelled?

- 2) Is the Landlord entitled to an order for possession?
- 3) Is the Landlord entitled to an order for unpaid rent?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord's agent confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on August 1, 2021.
- Rent of \$1,465.00 was payable by the Tenants on the first day of each month.
- A security deposit of \$300.00 is held by the Landlord in trust for the Tenants.

A copy of the written tenancy agreement was put into evidence by the Landlord.

The Landlord's agent advised that both Tenants were the recipients of some form of social assistance and that the global rent payable was apportioned by the Landlord between the Tenants. The Landlord's agent confirmed that this was done for internal management of the social assistance payments and that the Tenants were co-tenants under the tenancy agreement.

The Landlord's agent indicated that the Tenants had had issues paying rent in full for several months prior to issuing the 10-Day Notice. A rent ledger was put into evidence by the Landlord. The ledger indicates arrears of \$1,006.00 on January 1, 2022 after the co-tenant F.B. failed to pay rent in the amount of \$557.00. The 10-Day Notice has \$557.00 listed as the amount owing on Jan 13, 2022. The ledger further indicates that \$600.00 had been paid on January 18, 2022.

The Landlord's agent advised that the Landlord did not pursue a monetary order for unpaid rent in their application and were not seeking an order for unpaid rent on the face of the Tenant's application to cancel the 10-Day Notice. He advised that there were arrears in rent in the amount of \$934.00 as at the time of the hearing, though no documentary evidence was provided with respect to how this amount was obtained.

The Landlord's agent advised that the Tenants continue to reside within the rental unit.

Analysis

The Tenant applies to cancel a 10-Day Notice. The Landlord seeks an order for possession pursuant to the 10-Day Notice.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

When a 10-Day Notice to End Tenancy issued under s. 46 of the *Act* is received by a tenant, a tenant must, within 5-days, either pay the overdue rent or dispute the notice with the Residential Tenancy Branch. This is made clear at the very top of the 10-Day Notice to End Tenancy, which states:

HOW TO DISPUTE THIS NOTICE

You have **5 days** to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

Pursuant to Rule 2.6 of the Rules of Procedure, an application is considered to have been made when the application is submitted and either the fee or the fee waiver has been submitted to the Residential Tenancy Branch. In this case, the Tenant submitted their application on January 18, 2022 and submitted their fee waiver on January 19, 2022. Given this and in accordance with Rule 2.6, I find that the Tenant's application was made on January 19, 2022, which is when the fee waiver was submitted. Given this, the Tenant failed to file their application to dispute the 10-Day Notice within the 5 days permitted under s. 46(4) of the *Act*, with the last day being January 18, 2022, which is 5 days after it was received by the Tenants.

I accept the undisputed evidence from the Landlord as represented in the rent ledger that as at January 1, 2022, total arrears were in the amount of \$1,006.00 and that the amount of \$557.00 was in relation to unpaid rent for the month of January 2022. I accept that the Tenants paid \$600.00 on January 18, 2022, which is within the 5 days permitted under the *Act*. However, this did not erase the total overdue rent as there was an additional amount owing of \$406.00 on January 18, 2022. The correspondence

provided by the Landlord indicates that the issue of unpaid rent had been longstanding and had been communicated to the Tenants prior to the 10-Day Notice being issued. I am satisfied that the Tenants were aware of the total amount of rent that was owed when the 10-Day Notice was issued.

As the Tenants failed to pay the total overdue rent and failed to file their application within 5 days of receiving the 10-Day Notice, s. 46(5) comes into effect and the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit on the effective date. In this case, the effective date was January 31, 2022, as stated in the 10-Day Notice. As the Tenants continue to reside within the rental unit, they have been overholding since the effective date of January 31, 2022.

Accordingly, I find that the Tenant's application to cancel the 10-Day Notice is dismissed and that the Landlord is entitled to an order for possession.

I note that s. 55(1.1) obligates the director to make an order for unpaid rent when a tenant's application to cancel a 10-day notice to end tenancy is dismissed. However, under the circumstances I decline to do so on the basis that the Landlord's agent indicated at the hearing that the Landlord would not be seeking an order for unpaid rent, this after being advised by me of the application of s. 55(1.1) under the present circumstances. No order for unpaid rent will be made based on the submissions from the Landlord's agent. I further note that no documentary evidence was provided to me to indicate how the amount of \$934.00 was arrived at by the Landlord's agent.

Conclusion

I grant the Landlord an order for possession pursuant to s. 55 of the *Act*. The Tenants are to provide vacant possession of the rental unit within **two (2) days** of receiving the order for possession.

No order is made for unpaid rent.

It is the Landlord's obligation to serve the order for possession on the Tenants. If the Tenants do not comply with the order for possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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: April 25, 2022

Residential Tenancy Branch