



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with 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 February 8, 2022 (10 Day Notice).

The landlord and counsel for the landlord, LY (counsel) attended the teleconference hearing. The hearing was held by telephone conference call and began at 11:01 a.m., Pacific Time, on this date, May 12, 2022 to allow time for the participants to listen to the Residential Tenancy Branch (RTB) pre-recorded message to participants. The line remained open while the phone system was monitored for 15 minutes and the only participants who called into the hearing during this time was the landlord and their counsel. As the applicant tenant did not attend the hearing and after the 10-minute waiting period at 11:42 a.m. Pacific Time, the tenant's application was **dismissed without leave to reapply**. As the tenant did not attend the hearing, I consider the 10 Day Notice to be **undisputed**.

I have reviewed the Notice of Dispute Resolution Proceeding dated February 15, 2022 (Notice of Hearing) and have confirmed that the correct date and time of the hearing are listed. In addition, I have confirmed that the correct access codes were provided to both parties.

Given the above, the hearing continued without the tenant present in accordance with Rule 7.3 and Rule 7.4 of the RTB Rules of Procedure (Rules), which address consequences for not attending a dispute resolution hearing.

Preliminary and Procedural Matters

Counsel confirmed the landlord's email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the tenant provided their email address in the application, the decision will be emailed to the tenant.

Background and Evidence

A copy of the tenant agreement was submitted. Monthly rent is listed as \$4,000.00 per month and is due on the first day of each month. The tenant paid a security deposit of \$2,000.00 and counsel confirmed that the landlord is not seeking to offset the security deposit as the tenant is required to provide a written forwarding address to the landlord after vacating the rental unit.

The landlord affirmed that the 10 Day Notice was served on the tenant placing in the tenant's mailbox on February 8, 2022. Although the tenant filed to dispute the 10 Day Notice on February 9, 2022 and received a fee waiver, the tenant failed to attend the hearing as noted above. The 10 Day Notice was missing an effective vacancy date which I will address below. The amount listed as owed was \$10,750.00 due as of February 18, 2022.

The landlord and counsel stated that as of the date of the hearing, May 12, 2022, the tenant owes a total of \$22,750.00 in rent as follows:

1. September 2021: \$2,500.00 owing
2. November 2021: \$4,000.00 owing
3. December 2021: \$250.00 owing (credit applied to lower this amount to \$250.00 for work performed in the rental unit)
4. January 2022: \$1,000.00 owing
5. February 2022: \$3,000.00 owing
6. March 2022: \$4,000.00 owing
7. April 2022: \$4,000.00 owing
8. May 2022: \$4,000.00 owing

Counsel and the landlord confirmed that the tenant continues to occupy the rental unit. Counsel requested an order of possession and a monetary order of \$22,750.00 in rent arrears.

Analysis

Based on the undisputed documentary evidence of the landlord and counsel and the unopposed testimony provided during the hearing, and on the balance of probabilities, I find the following.

I accept that the tenant continues to occupy the rental unit and owes \$22,750.00 in rent arrears and that the tenant has breached section 26 of the Act, which requires that rent be paid on the first day of each month. Section 55 of the Act applies and states:

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.**

[emphasis added]

Given the above and after reviewing a copy of the 10 Day Notice, I amend the 10 Day Notice pursuant to section 68(1) of the Act to have an effective vacancy date of February 21, 2022. I have used this date as the 10 Day Notice is dated February 8, 2022 and section 90 of the Act states that documents served by mail are deemed served 3 days after they are mailed, which would be February 11, 2022 deemed service date plus 10 days equals February 21, 2022. I also note that section 53 of the Act automatically corrects an effective vacancy date under the Act.

I find the amended 10 Day Notice complies with section 52 of the Act. Pursuant to section 55 of the Act, I must grant an order of possession as I have dismissed the tenant's application and I find the 10 Day Notice complies with section 52 of the Act. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on February 21, 2022 which is the corrected effective vacancy date.

I do not find it necessary to consider any other aspect of the tenant's application as the tenancy ended based on the 10 Day Notice, which is valid.

Section 55(1.1) applies and states:

55(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]

Given the above, I grant the landlord **\$22,750.00** for rent arrears as noted above pursuant to section 55(1.1) and 67 of the Act.

Conclusion

The tenant's application is dismissed as the tenant failed to attend the hearing as scheduled.

The tenancy ended on February 21, 2022.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been granted a monetary order of \$22,750.00. Should the landlord require enforcement of the monetary order, the landlord must first serve the tenant with the monetary order. This order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

The tenant can be held liable for all costs related to enforcing the monetary order and order of possession.

This decision will be emailed to both parties. The order of possession and monetary order will be emailed to the landlord for service on the tenant.

This decision is final and binding on the parties, except as 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: May 12, 2022