



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

The Tenants (hereinafter, the “Tenant”) filed an Application for Dispute Resolution on March 24, 2022 seeking an order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”). The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 31, 2022.

The agent of the Landlord (hereinafter, the “Landlord”) attended the hearing; the Tenant did not. In the conference call hearing I explained the process and offered the Landlord the opportunity to ask questions. I provided the Landlord the opportunity to present oral testimony and make oral submissions during the hearing.

The Landlord confirmed receipt of the Notice of Dispute Resolution, delivered in person by the Tenant to the rental property office. This included some of the documentation the Tenant provided to the Residential Tenancy Branch for this hearing.

The Landlord verified they delivered a courtesy copy of the Notice of Dispute Resolution, giving the rescheduled date and time of this hearing, on May 5, 2022.

Issue(s) to be Decided

Is the Tenant entitled to an order to cancel the 10-Day Notice?

If the Tenant is unsuccessful in seeking to cancel the 10 Day Notice, is the Landlord entitled to an order of possession pursuant to s. 55(4) of the *Act*?

Background and Evidence

In the hearing, the Landlord provided the basic term in the agreement they have with the Tenant, that the rent amount is \$1,268.75, to be paid on the 1st of each calendar month.

The Landlord issued the 10-Day Notice for a carryover unpaid rent amount of \$32.50, from January 2022, and unpaid utilities in the amount of \$804.27. They served the 10-Day Notice to the Tenant in person to the Tenant on March 24, 2022 in the Landlord's office at the rental property. In the hearing the Landlord reviewed the past few months' rental payments by the Tenant, which were consistently not on the due date, and occurring toward the end of each month. The Landlord was clear that payments of rent were *not* within 5 days after they issued this 10-Day Notice to the Tenant.

Similarly, with utilities amounts owing, the power bill in particular adds up consistently to each following month, prompting a reminder from the municipality to the owner, who then informs the Landlord, who informs the Tenant. Similarly, when the Landlord provides a payment reminder, the Tenant does not make the payment or cover the balance promptly.

Analysis

The *Act* s. 46(1) states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after a tenant receives the notice.

Following this, s. 46(4) of the *Act* states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

I am satisfied that when the Landlord here issued the 10-Day Notice the Tenant owed \$32.50 in rent for the month of January 2022, and \$804.27 in utilities. The amount for utilities owed is verified by the reminder notice from the municipality that the Tenant provided with their Application.

I am satisfied the landlord issued the 10-Day Notice on March 24, 2022, and the Tenant received it on that same day. There is no evidence contrary to that of the agent of the Landlord presented in the hearing. This finding is also supported by the fact the Tenant applied to dispute the 10-Day Notice on the same day they received it from the Landlord.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to re-apply.

For this reason, I dismiss the Tenant's Application to cancel the 10-Day Notice. The tenancy is ending.

Under s. 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied the 10-Day Notice complies with the requirements under s. 52 regarding form and content, I must grant that landlord an order of possession.

I find that the 10 Day Notice complies with the requirements of form and content; therefore, the Landlord is entitled to an order of possession on the effective date

Conclusion

As the Applicant Tenant did not attend to present their Application, I dismiss the Tenant's application for a cancellation of the 10-Day Notice, without leave to reapply.

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

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 31, 2022

Residential Tenancy Branch