



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: OPR-DR
 TT: CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution was made on March 21, 2022 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent.

The Tenant’s Application for Dispute Resolution was made on March 24, 2022 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- to cancel a 10 Day Notice for Unpaid rent dated March 7, 2022 (the “10 Day Notice”).

The Landlord’s Agent J.P and the Tenant attended the hearing at the appointed date and time and provided affirmed testimony. At the start of the hearing, the parties confirmed service and receipt of their respective Applications and documentary evidence. As there were no issues raised, I find the above noted documents were sufficiently served pursuant to Section 71 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession, and an order requiring the payment of the unpaid rent, if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice, pursuant to Section 46 of the Act?
2. If the Tenant is not successful, is the Landlord entitled to an Order of Possession, and a monetary order for unpaid rent, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on November 1, 2019. Currently, the Tenant is required to pay rent in the amount of \$558.00 which is due on the first day of each month. The Tenant paid a security deposit in the amount of \$275.00 which the Landlord continues to hold. The Tenant continues to occupy the rental unit.

The Landlord's Agent testified the Tenant did not pay rent when due for March 2022. The Landlord's Agent stated that she subsequently served the Tenant with a 10 Day Notice dated March 7, 2022 with an effective date of March 17, 2022 by posting it to the Tenant's door on March 7, 2022.

The Landlord's Agent testified that the 10 Day Notice indicates that the Tenant failed to pay rent in the amount of \$558.00 which was due on March 1, 2022. The Landlord's Agent stated that the Tenant has not paid any amount towards the outstanding balance of unpaid rent for March 2022. Furthermore, the Landlord's Agent stated that the Tenant has also failed to pay rent for April and May 2022. The Landlord's Agent stated that the Tenant currently has an outstanding balance of unpaid rent in the amount of \$1,674.00.

The Tenant confirmed having received the 10 Day Notice on March 9, 2022. The Tenant stated that he had been receiving financial assistance, however, there was an issue with the March 2022 rent payment which resulted in the Landlord not receiving rent for March 2022. The Tenant stated that the provider was willing to pay March 2022 rent, however, after learning that the Landlord was still seeking to evict the Tenant for

non payment of rent, the provider decided to not pay the rent. As such, the Tenant acknowledged that March, April, and May 2022 rent has not been paid to the Landlord.

The Tenant referred to an overpayment of rent made in April 2020, however, the Landlord's Agent stated that this amount covered portions of unpaid rent in 2020. As such, the Tenant did not have a rent credit to apply to the outstanding rent for March 2022. The Tenant stated that he feels that the Landlord is only seeking to end his tenancy to raise the amount of rent for the rental unit.

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the Act states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

The Landlord's Agent testified that she served the Tenant with the 10 Day Notice by posting it to the Tenant's door on March 7, 2022. The Tenant confirmed receipt on March 9, 2022. I find that the 10 Day Notice was sufficiently served to the Tenant pursuant to Section 88 of the Act.

After receiving the 10 Day Notice on March 9, 2022, the Tenant made an Application to cancel the 10 Day Notice on March 24, 2022. As this is outside of the 5 day limitation period to dispute a notice to end tenancy I find that the Tenant is conclusively presumed to have accepted to end of the tenancy. I therefore dismiss the Tenant's Application without leave to reapply.

I accept that the parties agreed that the Tenant failed to pay rent for March, April, and May 2022. I find that the Tenant provided insufficient evidence to demonstrate that he

has a rent credit from April 2020. Furthermore, I find that it is the Tenant's responsibility to ensure that rent is paid in full to the Landlord when it is due.

According to Section 55 of the Act: (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.

(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.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent for March, April and May 2022 in the amount of \$1,674.00. I find it appropriate in the circumstances to order that the Landlord retain the \$275.00 security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$1,399.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$1,674.00
<i>LESS</i> security deposit:	-(<i>\$275.00</i>)

TOTAL:	\$1,399.00
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Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$1,399.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: May 25, 2022

Residential Tenancy Branch