



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR-MT, LRE, OLC**

This hearing was convened as a result of the Tenant's application for dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"). The Tenant applied for:

- an order for an extension of time to dispute a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated March 19, 2022 ("10 Day Notice") pursuant to section 66;
- if an extension of time to make the Application is granted, cancellation of the 10 Day Notice pursuant to section 46;
- an order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to section 70; and
- an order for the Landlord to comply with the Act, the *Residential Tenancy Regulations* (the "Regulations") and/or tenancy agreement pursuant to section 62.

The Landlord and the Tenant attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant testified the Landlord was served with the Notice of Dispute Resolution Proceeding ("NDRP") by regular mail email on April 2, 2022. Although service of the NDRP on the respondent by regular mail is not a method that complies with section 89(1) of the Act, the Landlord acknowledged receipt of the NDRP. As such, I find the NDRP was sufficiently served pursuant to section 72(1)(b) of the act. The Tenant stated he did not serve any evidence on the Landlord.

The Landlord stated he served his evidence on the Tenant by regular mail on April 13, 2022. The Tenant acknowledged receipt of the Landlord's evidence. I find the Landlord's evidence was served on the Tenant in accordance with the provisions of section 88 of the Act.

Issues to be Decided

- Is the Tenant entitled to an extension of time to make the Application?
- If an extension of time to make the Application is granted, is the Tenant entitled to cancellation of the 10 Day Notice?
- If an extension of time is not granted, or if an extension of time is granted but the 10 Day Notice is not cancelled, is the Landlord entitled to an Order of Possession and/or Monetary Order pursuant to section 55 of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The parties agreed the current tenancy commenced on February 1, 2022 for a fixed term ending April 30, 2022, with rent of \$1,700.00 payable on the 1st day of each month. The Landlord acknowledged the Tenant paid \$900.00 as a security deposit. The Landlord stated he applied, with the consent of the Tenant, the \$900.00 security deposit to make up a shortfall in rent for November 2021.

The Landlord stated the 10 Day Notice was served on the Tenant's door on March 19, 2022. The Tenant acknowledged he received the 10 Day Notice.

The Landlord stated the Tenant owed \$5,100.00 for rental arrears for the months of March, April and May 2022 calculated as follows:

Date	Rent Owed	Paid	Balance
01-Mar-22	\$1,700.00	\$0.00	\$700.00
01-Apr-22	\$1,700.00	\$0.00	\$3,400.00
01-May-22	\$1,700.00	\$0.00	\$5,100.00
Total	\$5,100.00	\$0.00	\$5,100.00

The Tenant admitted he had not paid the rent for March, April and May 2022.

Analysis

1. Order of Possession

Sections 46 and 53 of the Act state:

- 46(1) 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.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

The Landlord served the 10 Day Notice on the Tenant's door on March 19, 2022. Pursuant to section 90 of the Act, the Tenant was deemed to have received the 10 Day Notice on March 22, 2022. Pursuant to section 46(4), the Tenant had five days to make the Application, or March 28, 2022, being the next business day after the five-day period to make the Application. The records of the Residential Tenancy Branch disclose the Tenant made the Application on March 27. As such, the Tenant does not require an extension of time to dispute the 10 Day Notice.

The Tenant admitted he did not pay the rent for March, April or May 2022. I find the Tenant owes rental arrears of \$5,100.00. Section 26(1) of the Act states:

- 26 (1)** A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

As such, the Tenant was responsible for paying rent when it was due. I find the 10 Day Notice was issued for a valid reasons. Sections 55(1) and 55(1.1) of the Act state:

- 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.
- (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 the 10 Day Notice meets the form and content requirements of section 52 of the Act. As such, I dismiss the Application in its entirety without leave to reapply. Pursuant to section 55(1) of the Act, the Landlord is entitled to an Order of Possession requiring the Tenant give vacant possession of the rental unit to the Landlord.

2. Monetary Order for Rental Arrears

As noted above, I have found the Tenant owes rental arrears of \$5,100.00. Pursuant to section 55(1.1) of the Act, I order the Tenant to pay the Landlord \$5,100.00 representing unpaid rental arrears from March through May 2022, as specified above.

Conclusion

The Application is dismissed without leave to reapply.

Pursuant to section 55(1) of the Act, I order that the Tenant deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and attached Order of Possession by the Landlord. Should the Tenant or anyone on the premises fail to comply with this Order of Possession, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 55(1.1) of the Act, I order the Tenant pay the Landlord \$5,100.00 for rental arrears. This Monetary Order must be served by the Landlord on the Tenant and may be enforced in Provincial 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: May 10, 2022

Residential Tenancy Branch