



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR MT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A participatory hearing, via teleconference, was held on May 16, 2022. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- More time to file this application
- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the Notice)

Both sides were present at the hearing. All parties provided affirmed testimony and were given a full opportunity to be heard, to present evidence and to make submissions. The Landlord acknowledged receipt of the Tenants Notice of Dispute Resolution Proceeding and evidence package and did not provide any documentary evidence of her own.

Having reviewed this application, I find the Tenants applied within the allowable time frame (applied within 5 days of receipt of the Notice). As such, their application for more time to cancel the Notice is not required and will not be considered further.

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.

Issues to be Decided

- Should the 10 Day Notice to End Tenancy be cancelled?
 - If not, is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

Both parties agreed in the hearing that monthly rent in the amount of \$985.23 was to be paid on the first of each month. Both parties also agreed that the Landlord currently holds a security deposit in the amount of \$300.00. The Landlord stated that the Tenant failed to pay any rent for February, which is why the Notice was issued to the Tenant on February 3, 2022, for unpaid rent for that month.

A copy of the Notice was provided into evidence, and the Tenant acknowledged receiving the Notice on February 3, 2022 for unpaid February rent. Since that time, the Landlord stated that the Tenants have not paid any rent, and now owe rent for February, March, April, and May, totalling \$3,940.92. During the hearing, the Landlord confirmed this was the amount that is owed.

The Tenants do not refute that they owe the above amounts, but stated they would like some extra time to make payments. The Landlord was not open to coming to an agreement about payment arrangements.

Analysis

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

Further, I also note the following portion of the *Act*:

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.

(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 Notice was received by the Tenants on February 3, 2022, which is the day they acknowledged receiving it. Further, the undisputed testimony of both parties is that rent was not paid on February 1, 2022, and no rent has been paid since the Notice was issued. As rent has not been paid when due, and there is insufficient evidence before me that the Tenant had a right under the *Act* to deduct all or a portion of rent, I find that the Tenant's Application is dismissed.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. Having reviewed the 10 Day Notice, I find it complies with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenants.

Next, I turn to section 55 (1.1) of the *Act*, which specifies that I must grant a monetary order for outstanding unpaid rent, provided a valid 10 Day Notice was issued, and if the Tenant's application to cancel the 10 Day Notice is dismissed. After considering the evidence before me, I find there is sufficient evidence to demonstrate that the tenants owe and have failed to pay rent for the months of February - May 2022 (\$985.23 x 4), totalling \$3,940.92.

Pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$3,940.92
LESS:	
Security Deposit currently held by Landlord	(\$300.00)
TOTAL:	\$3,640.92

Conclusion

The Tenant's application to cancel the 10 Day Notice is dismissed.

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$3,640.92**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: May 16, 2022

Residential Tenancy Branch