



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westwynd Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:13 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:30 a.m. The landlord's agent, DG ("landlord") attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord confirmed the legal name of the landlord. As the tenants included the agent's name in their application, the application was amended to reflect the legal name of the landlord.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the tenants did not attend this hearing, their application is dismissed without leave to reapply.

The landlord confirmed that the tenants were served with a 10 Day Notice on February 7, 2022. The tenants provided a copy with just page 2 of the 10 Day Notice. The landlord submitted in evidence a photo of the 10 Day Notice which was posted on the tenants' door. In accordance with sections 88 and 90 of the Act, I find the tenants deemed served with the 10 Day Notice on February 10, 2022, 3 days after posting. As the copies submitted by both parties were not clear, the landlord agreed to re-submit a copy in order to me to confirm the details of the 10 Day Notice.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord testified regarding the following facts. This fixed-term tenancy began on July 1, 2021 with monthly rent set at \$2,100.00, payable on the first of the month. The landlord had collected a security and pet damage deposit of \$1,050.00 each deposit. The tenants still reside at the rental unit.

The landlord served the 10 Day Notice, dated February 7, 2022, on the tenants for failing to pay the February 2022 rent by February 1, 2022. The landlord testified that the tenants have paid the outstanding in full, but are constantly late. The landlord provided receipts in their evidentiary materials, including a receipt for a February 22, 2022 payment of \$2,100.00 for use and occupancy only. The landlord requests an Order of Possession for May 30, 2022 as the tenants are constantly late, and did not pay the rent in full within the required time period.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch or pay the outstanding rent. I find that although the tenants did file an application for dispute resolution within the five days of service granted under section 46(4) of the *Act*, the tenants did not pay the

outstanding rent until February 22, 2022, 12 days after the 10 Day Notice was deemed served.

Section 55(1) of the *Act* reads as follows:

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.

I find that the 10 Day Notice is valid and complies with section 52 of the *Act*.

Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected, effective date of the 10 Day Notice, February 20, 2022. As the tenants have not moved out, I find that the landlord is entitled to an Order of Possession. The landlord will be given a formal Order of Possession for May 30, 2022, which must be served on the tenants. If the tenants do not vacate the rental unit by May 30, 2022, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I dismiss the tenants' application without leave to reapply.

I grant an Order of Possession to the landlord effective **May 30, 2022**. Should the tenants or anyone on the premises 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 13, 2022

Residential Tenancy Branch