



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

The Tenant applies to cancel a 10-Day Notice to End Tenancy signed on March 2, 2022 (the “10-Day Notice”) pursuant to s. 46 of the *Residential Tenancy Act* (the “Act”).

X.L. appeared as the Landlord and was represented by her agent M.C. (the “Agent”). The Agent advised that the Landlord could not speak English well enough to participate in the hearing. Accordingly, submissions were made by the Agent without participation from the Landlord.

The Tenant did not appear, nor did someone appear on his behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Agent affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Agent confirmed that she was not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Agent advised that the 10-Day Notice was personally served on the Tenant on March 2, 2022. This is confirmed by a proof of service form provided by the Landlord. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act* and was received by the Tenant on March 2, 2022.

The Agent confirmed receipt of the Tenant’s application and advised that the Landlord’s response evidence was personally served on the Tenant on May 29, 2022. I find that the Landlord’s response evidence was served on the Tenant in accordance with s. 89 of the *Act* and was received on May 29, 2022.

The Tenant provided evidence to the Residential Tenancy Branch but was unable to demonstrate service of his evidence as required under Rule 3.5 of the Rules of Procedure. As service of his evidence was not demonstrated, I cannot make a finding that it has been served. Accordingly, the Tenant's evidence is not admitted into the record and shall not be considered as to do otherwise would be procedurally unfair to the Landlord.

Issue to be Decided

- 1) Should the 10-Day Notice be cancelled?
- 2) If not, is the Landlord entitled to an order for possession and an order for unpaid rent?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Agent confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on March 1, 2017.
- Rent of \$950.00 is payable on the first day of each month.
- A security deposit of \$435.00 is held by the Landlord in trust for the Tenant.

A copy of the written tenancy agreement was put into evidence by the Landlord confirming these details, with the exception of rent payable, which has been subject to increases since the beginning of the tenancy.

The Agent advised that the Tenant has missed paying rent on various occasions beginning first in April 2020. The Landlord provides banking records with respect to the Tenant's payment history and claims that the Tenant failed to pay rent at all for the following months:

- April 2020
- May 2020
- June 2020
- November 2020
- July 2021

- August 2021
- September 2021
- December 2021
- February 2022
- May 2022
- June 2022

The 10-Day Notice lists outstanding arrears as at March 1, 2022 at \$4,875.00. Though not the subject of this application, the Landlord provides a copy of a second 10-Day Notice to End Tenancy signed June 2, 2022, which lists outstanding arrears of \$8,425.00 as at June 1, 2022.

The Agent advised that the Landlord received a rental subsidy for the Tenant that was applied to the Tenant's arrears due to the Covid-19 Pandemic. I am told the Landlord received one \$300.00 payment in July 2021 and another in August 2021. The Agent advises that the arrears are reduced by \$600.00 in light of the rent subsidy the Landlord received in the summer of 2021.

I enquired why the Landlord had delayed in enforcing on the arrears. The Agent indicated to me that the Landlord is generally unfamiliar with the eviction process and was providing the Tenant time to make payment due to the Covid-19 Pandemic. That patience ran out in the spring of 2022.

The Agent confirmed the Tenant continues to reside within the rental unit.

Analysis

The Tenant applies to cancel the 10-Day Notice.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

Though this is the Tenant's application, Rule 6.6. of the Rules of Procedure is clear that the onus of proving the 10-Day Notice was issued in compliance with the *Act* rests with the Landlord.

I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

The Landlord provides bank statements as proof of the Tenant's payment history from April 2020 to March 2022. The bank records largely correspond to the evidence provided by the Agent at the hearing. I reproduce the payment history from the Landlord's banking records below:

Month	Rent Owed	Rent Paid	Difference
April 2020	\$950.00	\$0.00	-\$950.00
May 2020	\$950.00	\$0.00	-\$950.00
June 2020	\$950.00	\$0.00	-\$950.00
July 2020	\$950.00	\$1,425.00	\$475.00
August 2020	\$950.00	\$1,425.00	\$475.00
September 2020	\$950.00	\$475.00	-\$475.00
October 2020	\$950.00	\$950.00	\$0.00
November 2020	\$950.00	\$0.00	-\$950.00
December 2020	\$950.00	\$950.00	\$0.00
January 2021	\$950.00	\$950.00	\$0.00
February 2021	\$950.00	\$950.00	\$0.00
March 2021	\$950.00	\$950.00	\$0.00
April 2021	\$950.00	\$950.00	\$0.00
May 2021	\$950.00	\$950.00	\$0.00
June 2021	\$950.00	\$950.00	\$0.00
July 2021	\$950.00	\$0.00	-\$950.00
August 2021	\$950.00	\$950.00	\$0.00
September 2021	\$950.00	\$0.00	-\$950.00
October 2021	\$950.00	\$950.00	\$0.00
November 2021	\$950.00	\$950.00	\$0.00
December 2021	\$950.00	\$0.00	-\$950.00
January 2022	\$950.00	\$950.00	\$0.00
February 2022	\$950.00	\$0.00	-\$950.00
March 2022	\$950.00	\$950.00	\$0.00
Total Owed			\$7,125.00

The Agent advised that the Tenant paid rent in full for April 2022 and failed to pay rent at all for May and June 2022. The Agent further advised that the Landlord received a rental subsidy of \$600.00 was received in the summer of 2020. Taking these amounts into account, total arrears based on the evidence presented by the Landlord would be \$8,425.00.

I am satisfied based on the undisputed evidence provided by the Landlord that the Tenant failed to pay rent of \$950.00 on the first as required under the tenancy agreement and that he was in arrears when the 10-Day Notice was issued on March 2, 2022. As the 10-Day Notice complies with s. 52 of the *Act*, I find that the 10-Day Notice was properly issued under s. 46. Accordingly, I dismiss the Tenant's application to cancel the 10-Day Notice.

Section 55(1) provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession.

The Agent advises and I accept that the Tenant continues to reside within the rental unit. I find that the Landlord is entitled to an order for possession. Pursuant to s. 55(1) of the *Act*, I order that the Tenant provide vacant possession of the rental unit to the Landlord within two days of receiving this order.

Pursuant to s. 55(1.1) of the *Act*, if a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then the Director must grant an order for unpaid rent. In accordance with Policy Guideline 3, an order for unpaid rent is limited to rent owed during the tenancy and does not include compensation for an overholding tenant.

Where a tenant continues to reside in the rental unit and is unsuccessful in disputing a notice to end tenancy at the hearing, the tenancy ends on the date of the tenant's hearing as ordered by the Director in accordance with s. 68(2) of the *Act*. That has occurred here. Pursuant to s. 68(2) of the *Act*, I order that the tenancy ended on June 15, 2022.

The 10-Day Notice lists total arrears at March 1, 2022 of \$4,875.00. This does not correspond with the Landlord's bank records, which show total arrears at March 1, 2022 as being \$6,525.00 (\$7,125.00 - \$600.00). The Agent provided no evidence at the hearing to explain this discrepancy. However, I note that the total arrears to date based

on the bank records, being \$8,425.00, corresponds with the amount listed as owing in the second 10-Day Notice to End Tenancy signed on June 2, 2022.

Despite the discrepancy between the amount listed as owing in the 10-Day Notice and the amount claimed as unpaid by the Landlord at the hearing, I find that the total unpaid rent to date is \$8,425.00. I make this finding based on the Agents undisputed oral submissions and banking records. To be clear, I place significant weight on the Landlord's banking records as providing an accurate reflection of the Tenant's payment history.

I note that some of the rent arrears date back to the Covid-19 Pandemic and classify as "affected rent" under the *COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) Regulation*. However, any arrears that accrued over that period ought to have been repaid by no later than July 10, 2021. There is no basis upon which arrears that accrued during the height of the Pandemic ought not have been repaid by now.

I further note that the Landlord's claims for unpaid rent from the spring of 2020 are not statute bared as the limitation period of s. 60 of the *Act* is only triggered upon the end of the tenancy, which occurred today.

Accordingly, as I have found that total unpaid rent is \$8,425.00, I order that the Tenant pay this amount to the Landlord as unpaid rent pursuant to s. 55(1.1) of the *Act*.

Conclusion

The 10-Day Notice was properly issued and complies with s. 52 of the *Act*. The Tenant's application to cancel the 10-Day Notice is dismissed without leave to reapply.

Pursuant to s. 55(1) of the *Act*, I order that the Tenant give vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order for possession.

Pursuant to s. 55(1.1) of the *Act*, I order that the Tenant pay **\$8,425.00** to the Landlord in unpaid rent.

It is the Landlord's obligation to serve these orders on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the

Tenant does not comply with the order for possession, it may be filed by the Landlord with the Supreme Court of British Columbia and 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: June 15, 2022

Residential Tenancy Branch