



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ELEVATE PERFORMACE REALTY &
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR FFT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated April 13, 2022 (10 Day Notice) and to recover the cost of the filing fee.

An agent for the landlord, TS (agent) and an advocate for the tenant, LA (advocate) attended the teleconference hearing. The tenant did not attend the hearing. The hearing was held by telephone conference call and began promptly at 9:31 a.m., Pacific Time, on this date, January 13, 2022. The line remained open while the phone system was monitored for the entire 17-minute hearing and the only participants who called into the hearing during this time was the landlord agent and an advocate for the tenant, but not the tenant themselves. The advocate stated they tried to connect with the tenant but were unable to do so. As the applicant tenant did not attend the hearing and after the 10-minute waiting period at 9:41 a.m. Pacific Time, the tenant's application was **dismissed without leave to reapply**. As the tenant did not attend the hearing, I consider the 10 Day Notice to be **undisputed**.

I have reviewed the Notice of Dispute Resolution Proceeding dated May 9, 2022 (Notice of Hearing) and have confirmed that the correct date and time of the hearing are listed. In addition, I have confirmed that the correct access codes were provided to both parties.

Given the above, the hearing continued without the tenant present in accordance with Rules 7.1, 7.3 and 7.4 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), which address consequences for not attending a dispute resolution hearing.

Preliminary and Procedural Matter

The agent and advocate confirmed their email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Background and Evidence

Although neither party submitted a copy of the tenancy agreement the agent and advocate agreed that a fixed-term tenancy began on December 14, 2017 and converted to a month-to-month tenancy after December 31, 2018. The current monthly rent is \$907.00 per month and due on the first day of each month.

The tenant writes in their application that they received the 10 Day Notice on April 19, 2022. The 10 Day Notice had an effective vacancy date of April 27, 2022. The amount listed as owed was \$2,448.85 as of April 1, 2022.

The agent stated that the tenant failed to pay any amount within 5 days of being served with the 10 Day Notice and as of the date of the hearing, continues to owe a total of \$3,329.85 in rent arrears between February 2022 and July 2022 as the hearing was held on July 7, 2022.

The agent is seeking an order of possession and a monetary order for rent arrears. The agent testified that the tenant continues to occupy the rental unit.

Analysis

Based on the undisputed documentary evidence and the unopposed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 46 of the Act provides 5 days for the tenant to dispute a 10 Day Notice and I find the tenant was late filing their application as they confirm on their application that they received the 10 Day Notice on April 19, 2022. The 5th day would have fall on Sunday April 24, 2022 so pursuant to the *Interpretation Act* the tenant would be granted until the next business day, Monday, April 25, 2022. The tenant waited until Tuesday, April 26, 2022 before they filed their application. As a result, section 46(5) of the Act applies and states:

46(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.

[emphasis added]

Given the above, I find the tenant is conclusively presumed to have accepted the tenancy ends on the corrected effective vacancy date, which auto-corrects under section 53 of the Act to April 29, 2022.

I accept that the tenant failed to pay rent as indicated on the 10 Day Notice and I accept that the tenant continues to occupy the rental unit and owes a total of \$3,329.85 in rent arrears. Section 55 of the Act applies and states:

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.

[emphasis added]

Given the above and after reviewing a copy of the 10 Day Notice, I find the 10 Day Notice complies with section 52 of the Act. Pursuant to section 55 of the Act, I must grant an order of possession as I have dismissed the tenant's application and I find the 10 Day Notice complies with section 52 of the Act. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on April 29, 2022, which is the corrected effective vacancy date.

As the tenant's application was dismissed, the filing fee is not granted.

Section 55(1.1) applies and states:

55(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.**
[emphasis added]

Given the above, I grant the landlord **\$3,329.85** for unpaid rent arrears which includes up to July 2022 rent.

Conclusion

The tenant's application is dismissed as the tenant failed to attend the hearing as scheduled and failed to dispute the 10 Day Notice within the timeline set under section 46 of the Act.

The tenancy ended on April 29, 2022.

The filing fee is not granted.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been granted a monetary order of \$3,329.85. Should the landlord require enforcement of the monetary order, the landlord must first serve the tenant with the monetary order. This order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

This decision will be emailed to both parties. The order of possession and monetary order will be emailed to the landlord for service on the tenant.

The tenant is reminded that they can be held liable for enforcement costs related to both the monetary order and order of possession.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: July 7, 2022