



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The tenant applied on March 11, 2022 for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated March 7, 2022 (the 10 Day Notice); and
- compensation for monetary loss or other money owed.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding.

The landlord testified she did not serve her responsive evidence on the tenant. Rule 3.15 states that the respondent's evidence must be received by the applicant not less than seven days before the hearing. As the landlord did not serve her evidence on the tenant, I have not considered it in my decision.

Preliminary Matter

Rule of Procedure 2.3 states:

2.3 Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As it is not related to the central issue of whether the tenancy will continue, I dismiss, with leave to reapply, the tenant's application for compensation for monetary loss or other money owed.

Issues to be Decided

- 1) Is the tenant entitled to an order cancelling the 10 Day Notice?
- 2) If not, is the landlord entitled to an order of possession and a monetary order for unpaid rent?

Background and Evidence

While I have considered all the testimony and documentary evidence before me which complies with the Rules of Procedure, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my related findings are set out below.

Those present agreed on the following particulars of the tenancy. It began June 1, 2021, rent is due on the first of the month; and the tenant paid a security deposit of \$206.00 which the landlord still holds.

When asked how much rent is, the landlord stated rent was \$1,136.00 a month, then stated that rent was \$1,163.00 a month. The tenant was unsure about how much rent was; he said rent was \$1,171.00, including \$20.00 for parking; then said rent was \$1,136.00, but it had gone up -- he thinks to \$1,171.00. To clarify, I asked the tenant if it was correct that he paid rent of \$1,171.00, including \$20.00 for parking. He said he was not sure and that as he did not have the documentation in front of him, he would have to go with what the landlord had said.

A copy of the 10 Day Notice is submitted as evidence. The landlord testified the Notice was served on the tenant by posting it to the door on March 7, 2022; the tenant testified the Notice was served as described, and that he received it on the same day.

The 10 Day Notice is signed and dated by the landlord, states an effective date, states the reason for ending the tenancy, and is in the approved form. The Notice does not give the address of the rental unit.

The 10 Day Notice indicates the tenancy is ending because the tenant failed to pay rent in the amount of \$1,192.00 due on March 1, 2022.

The landlord testified that the \$1,192.00 is comprised of \$56.00 for the January rent increase, which the tenant did not pay, and \$1,136.00 for the February 2022 rent. When I pointed out that the 10 Day Notice states that the \$1,192.00 outstanding was due on March 1, 2022, the landlord submitted that her earlier testimony was an error, and that the remaining \$1,136.00 was the March rent owed, not the February rent.

The Landlord testified that the tenant made rent payments as follows:

Month in 2022	Rent Charged	Rent Paid	Monthly Outstanding
January	\$1,136.00	\$1,080.00	\$56.00
February	\$1,136.00	\$1,136.00	\$0.00
March	\$1,136.00	\$0.00	\$1,136.00
April	\$1,136.00	\$1,136.00	\$0.00
May	\$1,136.00	\$1,136.00	\$0.00
June	\$1,136.00	\$1,136.00	\$0.00
Total Rent Owing			\$1,192.00

The tenant agreed with the landlord's testimony on his rent payments for January through June 2022, as noted above, including that he did not pay rent for March 2022.

The landlord did not submit a tenant ledger as evidence. The landlord testified the April, May, and June amounts were accepted for use and occupancy only.

The landlord stated that under the housing guidelines, they review the rent increases annually, and that notice was provided to tenants in October 2021 that it would be done in December, but the review was postponed due to COVID.

The landlord testified that when they completed the review at the beginning of the year, they sent out the percent increase that is coming to every tenant in the building.

When asked to elaborate on the rent increase, the landlord testified that the increase "is under the guideline of the assessment of the annual income from their tax report assessment."

The landlord testified that in January 2022 the tenant's rent increased to \$1,136.00. When I asked what the rent was for December 2021, the landlord stated she did not have that information at hand.

The tenant testified that he did not know about the \$56.00 increase until he was told about it. When asked if he agreed to the increase, the tenant submitted “not really .. it is their rules” and that he is “kind of stuck.”

The tenant testified that when they added on the extra \$56.00, he did not have the extra amount in his bank account, so told the office to not charge him the full increased rent amount as there were insufficient funds in his account, and that he would pay the difference in cash.

The tenant testified that he has asked the landlord to review his income, but that they have not done so.

The tenant testified that his income has fluctuated due to going through a UIC transfer and having worked in 2019, and that the associated paperwork takes time to process.

Analysis

Based on the testimony of the parties, I find that the landlord served the 10 Day Notice on the tenant on March 7, 2022 by posting it to the door, in accordance with section 88 of the Act, and that the tenant received it the same day.

Section 52 of the Act states that for a notice to end tenancy to be effective, it must give the address of the rental unit. Although the landlord did not complete the rental unit address section of the 10 Day Notice, the tenant raised no question about which rental unit the Notice referred to. Section 68 of the Act includes:

68 (1) If a notice to end a tenancy does not comply with section 52 *[form and content of notice to end tenancy]*, the director may amend the notice if satisfied that

(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and

(b) in the circumstances, it is reasonable to amend the notice.

As I was confident the tenant knew the information omitted from the 10 Day Notice, and I found that in the circumstances, it was reasonable to amend the Notice, I proceeded with considering its merits.

Section 46 states that within five days after receiving a notice for non-payment of rent, the tenant may pay the overdue rent, or dispute the notice. As the tenant testified he received the 10 Day Notice on March 7, 2022 and applied to dispute the Notice on March 11, 2022, I find the tenant applied to dispute the 10 Day Notice within the deadline set by the Act.

Rule of Procedure 6.6 states:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

The landlord provided inconsistent testimony on how much rent was per month, did not submit a tenant register as evidence, and provided conflicting testimony regarding the origin of the outstanding rent amount noted on the 10 Day Notice.

Additionally, the landlord testified that the tenant received a rent increase in January 2022, but failed to demonstrate that it was a legal increase.

These missteps, as well as the fact that the landlord did not complete the 10 Day Notice correctly, and failed to serve their responsive evidence on the tenant, brings into question the landlord's credibility.

I find, on a balance of probabilities, that the landlord has failed to prove the amount of rent owed by the tenant.

Therefore, I find the landlord is not entitled to a monetary order for unpaid rent.

Section 46(1) of the Act states that 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.

The Act and the tenancy agreement require the tenant to pay rent. The parties agree that the tenant paid rent to the landlord in the past, and that the tenant failed to pay rent for March 2022.

Therefore, pursuant to section 46, I find the landlord is entitled to an order of possession.

Conclusion

The landlord is granted an order of possession which will be effective two days after it is served on the tenant. The order of possession must be served on the tenant. The order of possession 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: July 04, 2022

Residential Tenancy Branch