



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated March 11, 2022 ("10 Day Notice"); and for a monetary order of \$400.00 for damage or compensation under the Act.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing. However, the Landlord said that he submitted evidence to the RTB, but it is not before me in our system. I advised the Landlord that if he needed this evidence during the hearing to let me know, and that we could adjourn so that he could re-submit it. The Landlord did not indicate that he needed to refer to any of the evidence he submitted in the hearing, as he was able to rely on his testimony.

Preliminary and Procedural Matters

The Tenant provided his email address in the Application, and the Landlord provided his email address in the hearing. The Parties confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Early in the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on the application, the most urgent of which is the application to set aside a 10 Day Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's request to set aside the 10 Day Notice. Therefore, the Tenant's monetary claim is dismissed, with leave to re-apply.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The Parties agreed that the periodic tenancy in this rental unit began on August 1, 2017, with a current monthly rent of \$425.00, due on the first day of each month. The Parties agreed that the Tenant did not pay the Landlord a security nor a pet damage deposit.

The Tenant submitted a copy of the 10 Day Notice, which was signed and dated March 11, 2022, and which has the rental unit address. The 10 Day Notice was served by attaching a copy to the rental unit door on March 11, 2022, with an effective vacancy date of March 25, 2022. It was served on the ground that the Tenant failed to pay the Landlord \$425.00 in rent that was due on March 1, 2022. Pursuant to section 90 of the Act, a document served by attaching a copy to the rental unit door is deemed served three days later, on March 15, 2022, in this instance.

In the hearing, the Parties agreed that the Tenant paid his rent in March on March 22, 2022, which was seven days after having been served with the 10 Day Notice.

The Landlord confirmed the reason for issuing the 10 Day Notice, and said that the Tenant has not paid his rent for June or July 2022. I urged the Tenant to pay his rent as soon as possible, as he said he had these funds.

The Tenant said in the hearing that he did not pay his rent, because he had to pay for

his pain medication, which was his first priority. The Tenant explained that the elevator in the residential property stopped working in early March 2022, and that this forced the Tenant to walk up eight flights of stairs to get to his rental unit. He indicated that his health is challenged from accidents and an assault, so climbing the stairs harms his recover. However, the Parties agreed that the Landlord has provided the Tenant with the use of an alternate rental unit on a lower floor, to accommodate the Tenant's needs in this regard, until the elevator is repaired.

Analysis

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

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) 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.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(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.

...

I reviewed all relevant documentary evidence and oral testimony before me and

pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice on March 15, 2022, three days after it was posted on the rental unit door. I find the 10 Day Notice is consistent with section 52 of the Act, as to form and content.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In the hearing, the Landlord said that he was owed \$850.00 in unpaid rent as of July 2, 2022, as the Tenant paid his rent for March through May 2022, but not in June or July.

Section 55 (1.1) states that if a tenant applies to dispute a landlord's notice to end a tenancy, then the director must grant an order requiring the payment of the unpaid rent by the tenant, if the following circumstances apply:

- (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 complies with section 52 of the Act, as to form and content. Further, I uphold the Landlord's 10 Day Notice to end the tenancy. Accordingly, I find that the Landlord is eligible for a Monetary Order pursuant to section 55 (1.1) and the Tenants' Application.

The Tenant indicated that he could not afford to pay his rent, because he had to pay for pain medication. I appreciate the situation facing the Tenant is grim; however, section 26 of the Act, and the Parties' tenancy agreement requires the Tenant to pay rent on time, or face eviction pursuant to the Act.

The Tenant said that he thought that if he paid his rent within 10 days of being served with the 10 Day Notice, that the eviction was negated. However, section 46 (4) of the Act states that a tenant has five days to (a) pay overdue rent, in which case the notice has no effect, or (b) dispute the notice by applying for dispute resolution at the RTB. The Tenant paid his rent seven days after being deemed served with the 10 Day Notice, and he applied for dispute resolution on the same day as being deemed served with the 10 Day Notice. As such, the 10 Day Notice is not void, unless I determine that it is cancelled and of no force or effect in this proceeding.

However, I find that the Landlord provided sufficient evidence to meet his burden of proof on a balance of probabilities. As a result, the Tenant's Application to cancel the 10 Day Notice is dismissed without leave to reapply.

Accordingly, I find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenant has not paid rent for June or July 2022, the **Order of Possession** will be **effective two days after service** of the Order on the Tenant.

I also grant the Landlord a **Monetary Order** for unpaid rent of **\$850.00**, to be used, **if necessary**, for rent arrears from June and July 2022, should the Tenant fail to pay this amount owing.

Conclusion

The Tenant is unsuccessful in his Application, as the Landlord provided sufficient evidence to meet his burden of proof on a balance of probabilities. The Tenant's claim to cancel the 10 Day Notice is dismissed without leave to reapply. The Tenant's claim for a monetary award of \$400.00 for compensation is dismissed with leave to reapply.

Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible.

Pursuant to sections 46, 55 (1.1), and 67 of the Act, I award the Landlord with a **Monetary Order** of **\$850.00** for rent arrears for June and July 2022. Should the Tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Dated: July 04, 2022

Residential Tenancy Branch