



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on May 20, 2022:

- to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”);
- a return of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on July 22, 2022. Both the Landlord and the Tenant attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions on the process and present oral testimony during the hearing.

At the outset of the hearing, each party confirmed they received the prepared documentary evidence of the other in advance of the hearing date. On this basis, I proceeded with the hearing as scheduled.

Preliminary Matter – time limit for Application

In their Application of May 20, 2022, the Tenant applied for more time in which to file their Application. This is in line with the instruction on the 10-Day Notice issued by the Landlord on May 17, 2022: the time limit in which a tenant may dispute is 5 days.

From this timeline, I find the Tenant applied within the required time limit. As per Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure*, I amend the Application at

this hearing stage, and remove the portion of the Tenant's Application in which they ask for more time.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the May 17, 2022 10-Day Notice?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

Is the Tenant entitled to recovery of the filing fee for this Application, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement in place, showing it as a month-to-month tenancy from February 1, 2016 onwards. The agreement specifies rent of \$850 payable on the first day of each month. As of the date of the hearing, the amount of rent is at \$920 as per a rent increase that the Landlord stated was legally undertaken. The Tenant confirmed the basic rent amount at present.

As provided by the Tenant in their evidence, the Landlord issued the 10-Day Notice on May 17, 2022, setting the move-out date for May 27, 2022. This was for the amount owing, as of May 1, 2022, for \$11,300. The Landlord served this document by attaching it to the door of the rental unit on May 17, 2022, with the Tenant retrieving it on that same date.

In the Landlord's evidence is their written submission that lists the following record of "rent records", through 2021:

- January 2021: \$920 paid March 1st
- February 2021: \$920 paid April 23rd
- March 2021: \$920 paid May 28th
- April 2021: \$920 paid September 9th
- May 2021: \$160 paid Sept 9th -- \$500 paid November 16th

The Landlord calculated 13 months at \$920 each for the total of \$11,960, including a balance from May 2021 of \$260 owing. In the hearing the Landlord clarified that the 13-month timeframe they listed was for May 2021 through to June 2022.

As of June 1st, when the Landlord provided a response to the Tenant's Application, the total owing was \$12,200. In the hearing, the Landlord provided that the Tenant did not pay rent for July 2022.

The Tenant filed their Application on May 20, 2022, stating: "I do not owe that much money." In their Application, The Tenant noted their received the 10-Day Notice attached to the door of the rental unit.

In the hearing, the Tenant presented that they were aware they owe money on rent. They described their experience over the last year and stated it was not their intention to cause grief. The Tenant stated their agreement with the record presented by the Landlord, stating "I'm sure [they are] probably correct."

Analysis

The *Act* s. 26 requires a tenant to 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 s. 46(1), the *Act* sets out the right of a Landlord to end the tenancy in a situation where rent is unpaid:

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.

Following this, s. 46(4) states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the 10-Day Notice, or dispute it by filing an Application for Dispute Resolution.

I accept the evidence before me that the Tenant failed to pay the February rent owed in full by May 25, 2022 adding three days of deemed service granted under s. 90(c) of the *Act*. For that reason, I find the reason the Landlord served the 10-Day Notice is valid.

The Tenant is not successful in seeking to cancel this 10-Day Notice; therefore, I dismiss the Tenant's application.

The *Act* s. 55 provides that I must grant a landlord an order of possession where a tenant's Application is dismissed, *and* the 10-Day Notice complies with the s. 52 provisions of form and content. The rent amount indicated -- \$11,300 -- is the Landlord's indication they did not receive the full amount of rent for consecutive months starting from 2021. On my review of the document, I find the 10-Day Notice issued by the Landlord on May 17, 2022 contains each of the necessary elements set out in s. 52.

I find the Landlord had the authority to issue the Notice under s. 46 of the *Act*; therefore, I grant the landlord's an Order of Possession under s. 55 of the *Act*.

Based on the Landlord's testimony regarding their amended claim amount (allowed as per Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure*, I find the claim for the total rent amount owing is valid, and the landlord shall receive compensation for that amount. This is \$13,140 including the rent for July 2022 which the Landlord testified was not paid. I make this award by application of s. 55(1.1) of the *Act*, as well as the basic provision of compensation set out in s. 67.

The Tenant was not successful in their claim; therefore, I make no award for reimbursement of the Application filing fee.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the 10-Day Notice, without leave to reapply.

Pursuant to s. 55(1.1) of the *Act*, I grant the Landlord a Monetary Order in the amount of \$13,140 for unpaid rent. I provide the Landlord with this Order in the above terms and they must serve the Tenant with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

I grant an Order of Possession to the Landlord, **effective at 1:00pm on July 31, 2022**, as the parties agreed to in the hearing. Should the Tenant fail to comply, the Landlord may file this Order in the Supreme Court of British Columbia, where it may be 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 s. 9.1(1) of the *Act*.

Dated: July 22, 2022

Residential Tenancy Branch