



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR / CNR CNL FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- cancellation of a Two Month Notice to End Tenancy For Landlord’s Use of Rental Property, pursuant to section 49 (the Two Month Notice);
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

Issues

Is the landlord entitled to an order of possession for unpaid rent or should the 10 Day Notice be cancelled?

Is the landlord entitled to an order of possession pursuant to the Two Month Notice or should the Two Month Notice be cancelled?

Background and Evidence

The tenancy began on February 1, 2020, with a monthly rent of \$2200.00 payable on the 1st day of each month. The tenant paid a security deposit of \$1100.00 at the start of the tenancy which the landlord continues to hold.

The landlord submitted a copy of a 10 Day Notice dated April 2, 2022. The 10 Day Notice indicates the tenant failed to pay rent in the amount of \$2200.00 which was due on April 1, 2022. The 10 Day Notice provides that the tenant had five days from the date of service to pay the outstanding rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice.

The landlord testified that she personally served the tenant with the 10 Day Notice on April 2, 2022.

The landlord testified the outstanding rent was not paid within 5 days and no rent has been paid since and the tenant continues to occupy the rental unit.

The tenant acknowledged receipt of the 10 Day Notice and that he did not pay the full amount of the arrears indicated, within five days, of receiving the Notice, and that he has not paid any rent since. Rather, the tenant argued that a previous Two Month Notice issued by the landlord was not done so in good faith.

The landlord had issued the tenant with a Two Month Notice back on October 31, 2021. The tenant's application to dispute this Two Month Notice was well outside of the timelines permitted under the Act. Further, I note that the landlord was not seeking an order of possession pursuant to the Two Month Notice. The landlord submits that the parties had subsequently entered into a mutual agreement to end tenancy which replaced the Two Month Notice.

Analysis

I am satisfied that the tenant was personally served with the 10 Day Notice on April 2, 2022.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants application must be dismissed as the tenant acknowledged rent was not paid in full within 5 days after receiving the notice nor did the tenant have a right under this Act to deduct all or a portion of the rent.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the Act.

Further, as per section 55(1.1) if the application is in relation to a notice to end tenancy under section 46 [*landlord's notice: non-payment of rent*] an order requiring the payment of the unpaid rent must also be granted. However, the amount a tenant can be ordered to pay in such cases is limited to the amount as per the 10 Day Notice. The landlord seeking additional compensation is required to make a separate application and provide proper notice to the tenant in accordance with the legislation. In this case, although the landlord made her own application, the application does not indicate that the landlord was seeking any additional monetary compensation.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

The landlord is granted a monetary award for outstanding rent in the amount of \$2200.00, as per the 10 Day Notice.

The landlord continues to hold a security deposit of \$1100.00. Using the offsetting provisions of section 72 of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$1100.00.

As this tenancy has ended pursuant to the 10 Day Notice, I make no findings on the merits of the Two Month Notice. The tenant's application is dismissed in its entirety without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenants fail to comply with this Order; this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1100.00. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: August 04, 2022

Residential Tenancy Branch