



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR-DR, FFL
Tenant: CNR-MT, CNC, CNR

Introduction

On April 22, 2022 the Tenant applied for dispute resolution for an order cancelling the first 10-Day Notice to End Tenancy Issued for Unpaid Rent or Utilities (the “first 10-Day Notice”) issued by their Landlord on April 18, 2022. On this piece of the Application, the Tenant requested more time to dispute the notice. Additionally, they applied for a cancellation of the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued by the Landlord on April 18, 2022.

On May 4, 2022 the Landlord applied for an order of possession of the rental unit, and reimbursement of the Application filing fee. This was in line with the second 10-Day Notice (the “second 10-Day Notice”) they issued on May 3, 2022. The Landlord’s Application here was filed initially as a Direct Request. The matter proceeded by way of participatory hearing because this Direct Request application cannot be considered by that method when there was an application by the Tenant already in place.

On May 13, 2022 the Tenant applied for cancellation of the second 10-Day Notice, indicating that they received that document on May 9, 2022.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 22, 2022. The Landlord’s agent (hereinafter the “Landlord”) attended the telephone conference call hearing; the Tenant did not attend.

Preliminary Matter – parties’ service of the Notice of Dispute Resolution

To proceed with this hearing, I must be satisfied that each party made reasonable attempts to serve the other with the notice of their Applications. This means that there must be proof they served the document in a verified manner allowed under s. 89 of the *Act* and I must accept that evidence.

In the hearing, the Landlord acknowledged they received notification from the Tenant at the address they provided on the first 10-Day Notice. I conclude the Tenant effected service as required in this instance.

The Landlord advised they served the Tenant notice of their Application. They provided an image of two separate registered mail labels with the single receipt showing postage paid on June 3, 2022. I find this is a method of service, to the address provided by the Tenant on their Application of April 22, 2022, to the rental unit address where the Tenant still resides. By s. 90(a) of the *Act*, I deem the documents served to the Tenant on June 8, 2022.

For the Tenant's second Application (*i.e.*, to dispute the second 10-Day Notice), the Landlord stated they did not receive any notification. They stated that they only received a single package from the Tenant. I find this was the initial notification from the Tenant as described above.

The *Act* s. 59 contains the provisions for starting proceedings in a dispute resolution. Subsection (3) states: ". . . a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director. . ."

Additionally, the Rules of Procedure that are crafted to ensure a fair process specify the documents to be served by the Applicant (in this instance, the Tenant) to the Respondent (here, the Landlord). These are: the Notice of Dispute Resolution Proceeding provided when applying; the Respondent Instructions for Dispute Resolution; a process fact sheet; and other evidence submitted by the Applicant.

On this second Application, I conclude the Tenant did not provide notification to the Landlord either through mail or in person.

Because the Tenant did not affect complete service in this instance, I dismiss this Application, without leave to reapply.

Additionally, the Tenant did not attend the hearing, although I left the teleconference hearing connection open until 11:25am to enable them to call in to this teleconference hearing scheduled for 11:00am. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Hearing generated when the Tenant applied. I also confirmed throughout the duration of the call that the Tenant was not in attendance.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis and in the alternative, I dismiss the Tenant's initial Application, without leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to issue an Order of Possession pursuant to s. 55 of the *Act*?

Is the Landlord entitled to monetary compensation for unpaid rent pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover 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 their evidence. The tenancy began on August 1, 2021 on a month-to-month basis. The rent amount was \$1,500 per month payable on the 1st of each month. The Tenant paid a security deposit of \$750 and a pet damage deposit of \$750.

The Landlord provided a copy of the second 10-Day Notice that they signed on May 4, 2022. This document gave the move-out date of May 15, 2022. This listed the failure of the Tenant to pay the total rent amount owing of \$1,500, payable on May 1, 2022. The Landlord served this to the Tenant via email "to an address [the Tenant] provided as an address for service." The Landlord provided a copy of that email, dated May 5 at 10:21pm, with the scanned copy of the 10-Day Notice attached – the image showing the scan accompanies the Landlord's email copy.

The Landlord provided their breakdown of the accumulated rent on their Direct Request Worksheet. This is the accumulation of \$1,500 for the month of May 2022, owing at the time they completed that form on May 14, 2022.

In the hearing, the Landlord spoke to their communication with the Tenant on rent amounts owing. The Landlord clarified that the Tenant did not pay the May rent amount in full within 5 days after they served that notice to the Tenant on May 5, 2022. The Landlord stated the Tenant instructed the Landlord to use the deposit amounts in full toward payment of this rent owing. The Tenant provided some statements to the Landlord that they were intending to move out, but the Landlord did not convey any firm plans from the Tenant to confirm any end-of-tenancy date.

In addition, the Landlord in the hearing presented that more rent accumulated when the Tenant overstayed in the rental unit after service of the 10-Day Notice on May 5. As of the date of the hearing, the Tenant remained in the rental unit. For this hearing, the Landlord updated their monetary claim to add the full rent amount for the months of June, July, and August 2022, totalling \$4,500. This makes the total amount owing \$6,000.

Analysis

From the evidence and testimony of the Landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rent payments as well as the amount the Tenant was meant to pay each month.

I accept the evidence before me that the Tenant failed to pay the rent owed in full by May 10, 2022, within the five days granted under s. 46(4) of the *Act*. Though the Tenant did not dispute this 10-Day Notice within that five-day period, I dismiss the Application above because they did not serve the Notice of Dispute Resolution Proceeding to the Landlord, alternately, they did not attend the hearing.

On my review of the document, the One-Month Notice contains the necessary elements for it to be effective; therefore, it complies with s. 52.

The *Act* s. 55(1) states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application 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 s. 52 of the *Act*. By this provision, I find the Landlord is entitled to an Order of Possession.

The *Act* s. 26 outlines a tenant's duty to pay rent:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether 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.

I accept the evidence before me that the Tenant failed to pay full rent for May 2022 through to the present month August 2022, while maintaining occupancy of the rental unit. As presented, I find the Landlord is entitled to the amount of \$6,000 as they claim.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by a landlord. The Landlord here established a claim of \$6,000. After setting off the security deposit and the pet damage deposit, there is a balance of \$4,500. I am authorizing the Landlord to keep the security deposit and pet damage deposit amounts and award the balance of \$4,500 as compensation for the June, July, and August 2022 rent amounts.

As the Landlord was successful in their Application, I find that they are entitled to recover the \$100.00 filing fee paid for their Application.

Conclusion

In the absence of the Tenant in the hearing, I dismiss their Applications, each in their entirety, and without leave to re-apply.

Under s. 55(1) and s. 55(3) of the *Act*, I grant an Order of Possession effective two days after the Landlord serves it on the Tenant. Should the Tenant 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 s. 67 and s. 72 of the *Act*, I grant the Landlord a separate Monetary Order for the recovery of the amounts claimed and the filing fee paid for this application. This amount is \$4,600. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant 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 s. 9.1(1) of the *Act*.

Dated: August 23, 2022

Residential Tenancy Branch