



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

Introduction

The Landlord applies for an order of possession pursuant to s. 55 of the *Residential Tenancy Act* (the “Act”) after serving a 10-Day Notice to End Tenancy signed on March 15, 2022 (the “10-Day Notice”).

The Landlord’s application was originally filed as a direct request but was adjourned to a participatory hearing.

C.S. appeared as the Landlord. The Tenant did not appear, nor did someone appear on their behalf.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised that he personally served the Notice of Reconvened Hearing on the Tenant two weeks prior to the hearing. I note that the interim decision of the adjudicator dated May 18, 2022 directed that the Notice of Reconvened Hearing be served within 3 days of it being received by the Landlord. I further note that the interim decision found that the original Notice of Dispute Resolution and evidence was deemed to have been served on April 25, 2022.

Since the Tenant has been served with the original notice, I am satisfied he had sufficient notice of the application. Though the Notice of Reconvened Hearing was served outside the 3-day window set by the adjudicator in the interim decision, I accept the Landlord’s undisputed evidence that the Tenant did have notice of the reconvened

hearing at least two weeks ago. The Notice of Reconvened hearing merely sets the date and time for the participatory hearing and does not include additional claims that were not set out in the original notice. The Tenant knew the claim being made by the Landlord back in April 2022. Accordingly, I find that the Notice of Reconvened hearing was served in accordance with s. 89 of the Act and I further find that its service outside the 3-day window is not prejudicial to the Tenant.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on October 1, 2020.
- Rent of \$3,000.00 is due on the first day of each month.
- A security deposit of \$1,500.00 was paid by the Tenant.

A copy of the tenancy agreement was put into evidence by the Landlord.

The Landlord advised that the 10-Day Notice was posted to the Tenant's door on March 15, 2022. The 10-Day Notice indicates that the Tenant failed to pay \$3,000.00 on March 1, 2022.

The Landlord confirmed that the Tenant did not file to dispute the 10-Day Notice, though testified that the Tenant had paid rent for March 2022 after the 10-Day Notice was served. I enquired on the specific date the Tenant paid rent in March 2022 and the Landlord was unable to provide a specific date. However, he indicates that the rent was received by way of e-transfer in the last week of March 2022.

The Landlord further testified that the Tenant paid rent in April 2022 but has not paid rent from May 2022 to date. The Landlord confirmed the Tenant continues to reside within the rental unit.

Analysis

The Landlord applies for an order of possession after service the 10-Day Notice.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

I accept the Landlord's undisputed evidence that the 10-Day Notice was posted to the Tenant's door on March 15, 2022. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the 10-Day Notice on March 18, 2022.

I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30). Given the 10-Day Notice was received on March 18, 2022, the effective date of the notice is corrected automatically by s. 53 to March 28, 2022.

Pursuant to s. 46(4) of the *Act*, a tenant has 5 days from receiving a 10-day notice to end tenancy to either repay the overdue rent or file an application to dispute the notice. This is made clear at the very top of the 10-day notice to end tenancy, which states:

HOW TO DISPUTE THIS NOTICE

You have **5 days** to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

In this case, I accept the Landlord's undisputed testimony that the Tenant did not file to dispute the 10-Day Notice. Further, I accept the Landlord's undisputed evidence that the

Tenant paid rent in the last week of March 2022. Pursuant to when the 10-Day Notice was received, the Tenant had until March 23, 2022 to pay all overdue rent. The last week of March 2022 began on March 27, 2022. Accordingly, I find that the Tenant failed to pay the overdue rent or dispute the 10-Day Notice within the 5 days permitted under s. 46(4) of the *Act*.

Given this, s. 46(5) comes into effect and the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit on the effective date. In this case, the effective date is March 28, 2022. As the Tenant continues to reside within the rental unit, I find that the Landlord is entitled to an order of possession.

Rule 2.2 of the Rules of Procedure is clear that claims are limited to what is stated in the application. As the Landlord did not apply for an order for unpaid rent, I make no findings or orders with respect to this issue.

Conclusion

I grant the Landlord an order of possession pursuant to s. 55 of the *Act*. The Tenant shall provide vacant possession of the rental unit within **two (2) days** of receiving the order of possession.

It is the Landlord's obligation to serve the order of possession on the Tenant. If the Tenant does not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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: September 15, 2022

Residential Tenancy Branch