



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenants' application, filed on August 17, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 10, 2022 ("10 Day Notice"), pursuant to section 46.

The five tenants did not attend this hearing, which lasted approximately 22 minutes. The landlord and his advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 11:00 a.m. and ended at 11:22 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, his advocate, and I were the only people who called into this teleconference.

The landlord's advocate confirmed the names and spelling for her and the landlord. She said that she had permission to represent the landlord at this hearing. She stated that the landlord owns the rental unit. She provided the rental unit address. She provided her email address for me to send this decision to the landlord after the hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the landlord's advocate affirmed, under oath, that neither she, nor the landlord, would record this hearing.

I explained the hearing process to the landlord's advocate. I informed her that I could not provide legal advice to her, as my role as an Arbitrator is to make a decision regarding this application. She had an opportunity to ask questions. She confirmed that she was ready to proceed with this hearing. She did not make any adjournment or accommodation requests.

The landlord's advocate confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application. The tenants did not provide any written evidence for this hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to remove the names of two tenants, who did not have any surnames provided. The tenant indicated "don't know" for their surnames. This decision and resulting orders are not enforceable unless they include the legal first names and surnames of each party.

The landlord's advocate stated that the five tenants were served with five copies of the landlord's evidence package on November 17, 2022, by a process server who handed a copy to a person living at the rental unit, who refused to identify himself or provide his name. The landlord provided a signed affidavit from the process server. The landlord was unable to confirm the name or identity of the person that the documents were provided to, and whether he was an adult apparently residing with the tenant, as required by section 88 of the *Act*. Therefore, I did not consider the landlord's evidence in this decision, except for the 10 Day Notice and the tenancy agreement, since the tenants failed to provide copies of same.

The landlord's advocate stated that the landlord's evidence package was personally handed to an RTB employee on November 17, 2022, but the evidence was not uploaded by the RTB to the online RTB dispute access site. She said that she uploaded the evidence to the online RTB dispute access site on December 1, 2022, the day before this hearing, because she discovered it had not been uploaded by the RTB.

The landlord's advocate stated that the landlord personally served tenant SB ("tenant") with the landlord's 10 Day Notice on August 10, 2022. She said that the tenant was also served by email on the same date. She claimed that the effective move-out date on the notice is August 20, 2022. In accordance with section 88 of the *Act*, I find that the tenant was personally served with the landlord's 10 Day Notice on August 10, 2022. In this application, the tenant claimed that she received the 10 Day Notice on August 11, 2022, by email.

Preliminary Issue – Dismissal of Tenants' Application

Rule 7.3 of the RTB *Rules* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submissions from the tenants, I order the tenants' entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenants' application to cancel a 10 Day Notice, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

Pursuant to section 55 of the *Act*, if I dismiss the tenants' application to cancel a 10 Day Notice, the landlord is entitled to a monetary order for unpaid rent, without filing a separate application for same, if the notice meets the requirements of section 52 of the *Act*.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

While I have turned my mind to the testimony of the landlord's advocate at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The landlord's advocate testified regarding the following facts. This tenancy began on October 1, 2018. Monthly rent in the amount of \$2,200.00 is payable on the first day of each month. A security deposit of \$1,100.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed between the landlord and the tenant only, not any other tenants. The tenant continues

to reside in the rental unit, as far as the landlord is aware. The landlord drove by the rental unit on the day before this hearing and saw people at the rental unit. The tenant has other squatters living at the rental unit with her. The landlord's advocate was told by the RTB that the tenant moved out and wanted to cancel this hearing, but the landlord was not told anything by the tenant, so he does not know whether she moved out. The landlord's advocate was told that "tenant RE" is deceased and "tenant NT" is the tenant's ex-husband.

The landlord's advocate stated the following facts. The landlord issued the 10 Day Notice for unpaid rent of \$2,200.00 due on August 1, 2022. The tenant failed to pay rent of \$2,200.00 for August 2022 to the landlord. The tenant failed to pay rent of \$2,200.00 for each month from September to December, to the landlord. The landlord seeks an order of possession and a monetary order for unpaid rent of \$11,000.00 total, against the tenant. The landlord seeks an order of possession against the tenant and any other occupants, since there are other tenants squatting at the rental unit. The landlord seeks a monetary order against the tenant only, not any other tenants, because she is the only one who signed a tenancy agreement with the landlord.

Analysis

The resulting orders from this decision are issued against the tenant only, since the tenant signed a tenancy agreement with the landlord, not any other tenants. This was also requested by the landlord, as noted above.

On a balance of probabilities, I make the following findings based on the landlord's undisputed evidence and the undisputed testimony of the landlord's advocate at this hearing, as the tenant did not attend.

According to subsection 46(4) of the *Act*, a tenant may dispute a 10 Day Notice by making an application for dispute resolution within five days after the date the tenant received the notice. In this application, the tenant claimed that she received the 10 Day Notice on August 11, 2022. The landlord's advocate provided affirmed testimony that the tenant was personally served with the notice on August 10, 2022. The tenant filed this application to dispute the notice on August 17, 2022.

Therefore, the tenant was not within the five-day time limit to dispute the notice, regardless of whether she received the notice on August 10 or 11, 2022. The tenant did not apply for more time to dispute the notice. The tenant did not appear at this hearing to present her application.

The tenant failed to pay the full rent due of \$2,200.00 due on August 1, 2022, within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days or to appear at this hearing to pursue her application or apply for more time to dispute the notice, led to the end of this tenancy on August 20, 2022, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by August 20, 2022.

Section 55(1) of the *Act* reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (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.*

As noted above, I dismissed the tenants' application. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. Since the effective date on the notice has long passed on August 20, 2022, and the tenant has failed to pay full rent from August to December 2022, I find that the landlord is entitled to an Order of Possession effective two (2) days after service on the tenant.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which in this case, required the tenant to pay by the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation*, or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$2,200.00 for each month from August to December 2022, totalling \$11,000.00. Therefore, I find that the landlord is entitled to \$11,000.00 total in rental arrears from the tenant.

The landlord continues to hold the tenant's security deposit of \$1,100.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's entire security deposit of \$1,100.00, in partial satisfaction of the

monetary award. No interest is payable over the period of this tenancy. I issue a monetary order of \$9,900.00 to the landlord, against the tenant, for the balance owing.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain the tenant's entire security deposit of \$1,100.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$9,900.00 against the tenant. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 02, 2022

Residential Tenancy Branch