



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 pursuant to the *Residential Tenancy Act* ("the Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The landlord confirmed that they understood.

Rule 7.3 of the Rules of Procedure 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.

As the tenants did not attend this hearing, their application is dismissed without leave to reapply.

The landlord testified that the tenants were served with the 10 Day Notice dated July 26, 2022 by way of posting the 10 Day Notice on their door on the same date. I am satisfied that the tenants were served with the 10 Day Notice in accordance with section 88 of the *Act*. As the tenants did not submit a copy of the 10 Day Notice as part of their application package, I allowed to landlord to submit a copy of the 10 Day Notice after the hearing for consideration. As the tenants had referenced the 10 Day Notice in their own application, and as the landlord was submitting an identical copy of the 10 Day Notice the tenants were applying to cancel, I did not find that it would unreasonably prejudice the tenants or result in a breach of the principles of natural justice by allowing the landlord to submit a copy of the 10 Day Notice after the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the 10 Day Notice?

Background and Evidence

The landlord testified to the following facts. This month-to-month tenancy began on February 1, 2022 with monthly rent set at \$1,975.00, payable on the first of the month. The landlord still holds a security deposit of \$985.00.

The landlord testified that they had served the tenants with the 10 Day Notice on July 29, 2022 for failing to pay \$4,525.00 in outstanding rent. The landlord testified the tenants have not paid the outstanding rent, nor have the tenants paid any rent since the issuance of the 10 Day Notice. The landlord testified that the tenants now owe \$14,400.00 in outstanding rent for this tenancy. The landlord is seeking an Order of Possession, as well as a Monetary Order for the outstanding rent.

Analysis

Section 55(1) and (1.1) of the *Act* reads as follows:

Order of possession for the landlord

- 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.

(1.1)If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) 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.

I find that the 10 Day Notice complies with section 52 of the *Act*. Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to section 55(1.1) of the *Act*, I find that the landlord is entitled to a monetary order in the amount of \$14,400.00 for the unpaid rent for this tenancy.

The landlord continues to hold the tenants' security deposit in the amount of \$985.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary order for unpaid rent.

Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected, effective date of the 10 Day Notice, August 8, 2022. As the tenants have not moved out, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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 tenants**. Should the tenants 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 issue a \$13,415.00 Monetary Order in favour of the landlord under the following terms:

Item	Amount
Unpaid Rent	\$14,400.00
Less Security Deposit Held	-985.00
Total Monetary Order	\$13,415.00

The tenants must be served with this Order as soon as possible. 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: December 29, 2022

Residential Tenancy Branch