



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE

Introduction

The Tenants seek an order pursuant to s. 46 of the *Residential Tenancy Act* (the “*Act*”) cancelling a 10-Day Notice to End Tenancy signed January 4, 2023 (the “10-Day Notice”). By way of amendment, the Tenants also seek an order pursuant to s. 70 of the *Act* restricting the Landlords’ right of entry.

G.C. appeared as the Landlords’ agent. The Tenants did not attend the hearing for their application, nor did someone attend on their behalf.

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

The Landlords’ agent affirmed to tell the truth during the hearing and confirmed he was not recording the proceedings himself.

The Landlords’ agent acknowledges receipt of the Notice of Dispute Resolution but denies receipt of the Tenants’ amendment. Based on the acknowledged receipt, I find that the Notice of Dispute Resolution was served in accordance with the *Act*.

Pursuant to Rule 4.6 of the Rules of Procedure, applicants must serve their amendment on respondents at least 14 days prior to the hearing. As the Tenants were not present to advise on service of the amendment and as the Landlords’ agent denies that the Landlords received it, I find that Tenants have failed to show the amendment was served and that the amendment is not permitted under the circumstances. This claim is dismissed with leave to reapply for want of service.

The Landlords' agent advises that the Landlords' response evidence was served via registered mail sent to the rental unit on January 17, 2023 and provides tracking numbers for the packages. I find that the Landlords response evidence was served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Landlords response evidence was received by the Tenants on January 22, 2023.

Issues to be Decided

- 1) Is the 10-Day Notice enforceable?
- 2) If so, are the Landlords entitled to an order of possession and order for unpaid rent?

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 Landlords agent confirmed the following details with respect to the tenancy:

- The Tenants moved into the rental unit on November 1, 2022.
- Rent of \$2,800.00 is due on the first day of each month.
- A security deposit of \$1,400.00 was paid by the Tenants.

I am provided with a copy of the tenancy agreement by the Landlords in their evidence, which confirms the details above.

The Landlords' agent advises that the Tenants were personally served with the 10-Day Notice on January 4, 2023. I am directed to a proof of service form signed by the Landlords with respect to the personal service of the 10-Day Notice in their evidence.

The 10-Day Notice lists that the Tenants failed to pay rent on January 1, 2023 in the amount of \$2,800.00, which was confirmed by the Landlords' agent. The Landlords' agent further confirms that the Tenants have not made payment on this amount such that total unpaid rent as at the date of the hearing is \$2,800.00.

The Landlords' agent requests that any unpaid rent order include rent for February 1, 2023 as the Tenants continue to reside within the rental unit and the hearing took place on January 31, 2023.

Analysis

The Tenants apply to cancel 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. Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from received a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. If a tenant files to dispute the notice, the burden of proving it was issued in compliance with s. 46 of the *Act* rests with the respondent landlord.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. 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, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

I accept that the 10-Day Notice was personally served on the Tenants on January 4, 2023 as confirmed by the agent and specified within the proof of service provided. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act* and received by the Tenants on January 4, 2023.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. In this instance, I accept the undisputed evidence from the Landlords' agent that rent was unpaid on January 1, 2023 and that the Tenants did not pay the outstanding amount within 5 days of receiving the 10-Day Notice. Accordingly, I find that the 10-Day Notice was properly issued and the Tenants' application to cancel the notice is hereby dismissed.

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As that is the case here, I find that the Landlord is entitled to an order of possession and shall be granted the order.

Pursuant to s. 55(1.1) of the *Act*, if a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal

requirements of s. 52, then the Director must grant an order for unpaid rent. In accordance with Policy Guideline 3, an order for unpaid rent is limited to rent owed during the tenancy and does not include compensation for an overholding tenant. Where a tenant continues to reside in the rental unit and is unsuccessful in disputing a notice to end tenancy at the hearing, the tenancy ends on the date of the tenant's hearing as ordered by the Director in accordance with s. 68(2) of the *Act*.

As that is the case here, I find that the tenancy ends on January 31, 2023. I decline to grant the Landlords' request that rent for February 1, 2023 be included as, strictly speaking, the tenancy ended prior to this date. It would be inappropriate, in my view, to include this in an unpaid rent order issued under s. 55(1.1) of the *Act*, which operates by way of statutory application rather than a direct application filed by the Landlords themselves. Accordingly, I grant an order for unpaid rent totalling \$2,800.00. The Landlords may apply for compensation in lieu of rent for February 1, 2023 should they choose to do so and should the Tenants overhold the rental unit.

Conclusion

The Tenants application to cancel the 10-Day Notice is hereby dismissed without leave to reapply.

I grant the Landlords an order of possession pursuant to s. 55(1) of the *Act*. The Tenants shall provide vacant possession of the rental unit to the Landlords within **two (2) days** of receiving the order of possession.

I grant the Landlords a monetary order for unpaid rent pursuant to s. 55(1.1) of the *Act*. The Tenants shall pay **\$2,800.00** to the Landlords in unpaid rent.

It is the Landlords obligation to serve these orders on the Tenants. If the Tenants do not comply with the monetary order, it may be filed by the Landlords with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenants do not comply with the order of possession, it may be filed by the Landlords 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: January 31, 2023

Residential Tenancy Branch