



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy signed on December 22, 2022 (the “10-Day Notice”); and
- return of the filing fee pursuant to s. 72.

G.M. appeared as the Tenant. D.B. appeared as the Landlord’s agent. The Landlord called N.A.-B. as a witness.

The parties 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. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advises that he served his application and evidence on the Landlord. The Landlord’s agent acknowledged receipt of the Tenant’s application materials without objection. Based on the acknowledged receipt of the Tenant’s application materials without objection, I find that pursuant to s. 71(2) of the Act that Tenant’s application materials were sufficiently served with the Landlord.

The Landlord’s agent confirmed that no response evidence was served on the Tenant.

Issues to be Decided

- 1) Should the 10-Day Notice be cancelled?
- 2) If not, is the Landlord entitled to an order of possession?
- 3) Is the Landlord entitled to an order for unpaid rent?
- 4) Is the Tenant entitled to the return of his filing fee?

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 parties confirmed the following aspects with respect to the tenancy:

- The Tenant moved into the rental unit in February 2014.
- Rent is due on the first day of each month.

I have not been provided with a copy of the tenancy agreement by either party. The Landlord's agent advises that the current Landlord took over ownership of the residential property in question in March 2019.

I am advised by the parties that the Tenant was personally served with the 10-Day Notice on December 22, 2022. I am aware that a separate application was made with respect to another 10-day notice to end tenancy which was heard on January 24, 2023, that notice having also been dated December 22, 2022. The parties confirm that two notices to end tenancy were issued by the Landlord.

The Landlord's agent advises that the Tenant was served with a notice of rent increase in December 2019, which N.A.-B. confirms she personally served on the Tenant on December 26, 2019. The Landlord's witness also confirms that she served the other tenants at the building with a notice of rent increase at the same time.

I have not been provided with a copy of the notice of rent increase from December 2019. The Landlord's agent tells me that it lists the incorrect base rent, listing it as \$650.00 rather than the \$637.00 that the Tenant had been paying at that time. According to the Landlord's agent, the Tenant ignored the rent increase when it was to take effect on April 1, 2020 and that this was only discovered by the Landlord when it was preparing rent increase notices in December 2022. The Landlord's agent further tells me that the Landlord informed the Tenant on December 16, 2022 with respect to the issue.

The Tenant denies ever receiving a notice of rent increase in December 2019 and says the first he heard of it was on December 16, 2022. The Tenant says he works in the forestry sector and spends some months away and that he was in northwestern BC at the time the notice of rent increase was issued. The Tenant argued that he takes no

issue with a rent increase, having received them from the previous landlord, but takes issue with what is asserted by the Landlord as he did not receive it.

The parties confirm that the Tenant paid \$637.00 in rent on January 1, 2023 and that he has not paid any of the arrears as listed within the 10-Day Notice. The parties further confirm that the Tenant continues to reside within the rental unit.

Analysis

The Tenant seeks an order cancelling 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.

I accept the undisputed evidence of the parties that the Tenant was personally served with the 10-Day Notice and received it on December 22, 2022. I find that this was done in accordance with s. 88 of the *Act*.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenant filed his application disputing the 10-Day Notice on December 23, 2022. Accordingly, I find that he filed his application in accordance with the 5 days permitted to him under s. 46(4) of the *Act*.

Leaving aside whether the Tenant received the notice of rent increase in December 2019, I know that I have not received it. Section 42(3) of the *Act* requires a notice of rent increase to be in the approved form. In this instance, I cannot verify this as the purported notice was not given to me. Further, I have not been given any information on when the previous rent increase was issued, such that I am unaware if the timing of the rent increase was in compliance with s. 42(1) of the *Act*.

I am also told by the Landlord's agent that the notice listed that the Tenant's rent was to be increased from a base of \$650.00, rather than the \$637.00 it ought to have said. Based on the approved form, what should be clear from a notice of rent increase is what

rent was previously paid, what increased rent will need to be paid, and when the increased amount will need to be paid. By the Landlord's own admission, the notice of rent increase is deficient as it increased rent from \$650.00 as its base rather than \$637.00. In other words, the increased amount was incorrect and, thus, in contravention of the amount permitted by s. 22 of the Regulations.

Regardless of whether the 2019 notice of rent increase was, in fact, served, I find that the Landlord has failed to prove that it was a valid rent increase. It is in an unknown form and by the Landlord's own admission it was incorrect such that it would be unenforceable even had it been in the correct form and even had it been served.

I find that the Landlord has failed to demonstrate that the increase from 2019 was made in accordance with the *Act*. Accordingly, I find that the 10-Day Notice is improper as the Tenant was not in arrears of rent when it was served. The 10-Day Notice is hereby cancelled.

Conclusion

The 10-Day Notice is hereby cancelled and is of no force or effect. The tenancy shall continue until ended in accordance with the *Act*.

The Tenant was successful in his application. I find he is entitled to the return of his filing fee. Pursuant to s. 72(1) of the *Act*, I order the Landlord pay the Tenant's \$100.00 filing fee. Pursuant to s. 72(2) of the *Act*, I direct the Tenant withhold \$100.00 from rent owed to the Landlord on **one occasion** in full satisfaction of his filing fee.

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 30, 2023

Residential Tenancy Branch