



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNOP, CNMN

Introduction

On August 9, 2022, the Tenants filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) dated August 5, 2022. The matter was set for a conference call.

The Landlord attended the conference call hearing; however, the Tenants did not. As the Tenants are the applicants in this hearing, I find that the Tenants had been duly notified of the Notice of Hearing in accordance with the *Act*.

The Landlord was affirmed to be truthful in their testimony and was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Notice dated August 5, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession and a monetary order?

Background and Evidence

This hearing was scheduled for a teleconference hearing on this date.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. Rule 7.3 of the Rules of Procedure stipulates that an Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

This hearing was scheduled to commence at 11:00 a.m. on January 9, 2023. I called into the teleconference at 11:00 a.m.; the line remained open while the phone system was monitored for ten minutes, and the only participant who called into the hearing during this time was the Landlord. Therefore, as the Tenants did not attend the hearing by 11:11 a.m. and the Landlord appeared and was ready to proceed, I dismiss the Tenants' application without leave to reapply.

The Landlord testified that they served the 10-Day Notice to the Tenant on August 5, 2022, in person to the Tenants at the rental unit. The 10-Day Notice recorded an effective date of August 23, 2022, and an outstanding rent amount of \$1,928.50.

The Landlord testified that as of the date of these proceedings, the Tenants had not paid the full outstanding rent August with in the required 5 days as indicated on the Notice to end tenancy. The Landlord is requesting that the Notice be enforced and that an order of possession be issued, as the Tenants did not pay the rent within five days of receiving the 10-Day Notice as required. The Landlord submitted a copy of the Notice to end tenancy into documentary evidence.

The Landlord testified that the Tenants had verbally indicated to them that they had left the rental unit as of December 9, 2022, but that the Tenants had moved in other occupants that were still residing in the rental unit as of that date of these proceedings.

The Landlord also testified that as of the date of these proceedings part of the September 2022 rent was outstanding in the amount of \$628.00, and that all of the rent for October 2022, November 2022, December 2022 and January 2023 had not been paid for this tenancy.

When asked by this Arbitrator, the Landlord testified that the rent for this rental unit is \$1,928.50 per month and that the Tenants had paid a \$950.00 security deposit at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord requested a monetary order of the outstanding rent in the amount of \$8,342.00, consisting of \$628.00 for September 2022, \$1,928.50 for October 2022, \$1,928.50 for November 2022, \$1,928.50 for December 2022 and \$1,928.50 for January 2023.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect,
or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I find that the Tenants had received the 10-Day notice on August 5, 2022, by personal service of the Landlord at the rental unit and did apply to dispute the Notice within the legislated timeline. However, as stated above, the Tenants failed to attend these proceedings and I have therefore dismissed their application to dispute the Notice to end tenancy.

I accept the undisputed testimony of the Landlord that the Tenants did not pay the outstanding rent, as indicated on the Notice within the required 5 days. Therefore, I find that the Tenants are in breach of section 26 and 46 of the *Act* by not paying the rent in accordance with the tenancy agreement or within 5 days after notice.

Section 55 of the *Act* states that a landlord may request an order of possession and monetary order if a notice to end the tenancy has been given by the landlord and the tenant has failed in their attempt to dispute a Notice to end tenancy.

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.

(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.

I have reviewed the 10-Day Notice to End Tenancy, and I find the 10-Day Notice complies with section 52 of the *Act*. As I have dismissed the Tenants' application, pursuant to section 55 of the *Act*, I must grant the Landlord an order of possession to the rental unit.

Therefore, I grant an Order of Possession to the Landlord effective two days after service of this Order on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I also accept the undisputed testimony of the Landlord that the Tenants have not paid the rent owed for the months of September 2022, October 2022, November 2022, December 2022 or January 2023, for this tenancy. I find that the Landlord has proven their entitlement to a monetary award in the amount of \$8,342.00 for the outstanding rent. I grant permission to the Landlord to retain the security deposit for this tenancy in partial satisfaction of this award.

I grant the Landlord a monetary order in the amount of \$7,392.00, consisting of \$8,342.00.00 in unpaid rent, less the security deposit of \$950.00 that the Landlord is holding for this tenancy.

Conclusion

I find for the Landlord pursuant to sections 46, 55 and 67 of the *Act*.

I grant an **Order of Possession** to the Landlord effective **two days** after service on the Tenants. The Tenants must be served with this Order. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the Landlord a **Monetary Order** in the amount of **\$7,392.00** for the outstanding rent, less the security deposit the Landlord holds. The Landlord is provided with this Order in the above terms, and the Tenant 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: January 9, 2023

Residential Tenancy Branch