



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HIGHPOINT REALTY LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application, filed on September 14, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 7, 2022 ("10 Day Notice"), pursuant to section 46.

The tenant did not attend this hearing, which lasted approximately 17 minutes. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 9:30 a.m. and ended at 9:47 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's agent and I were the only people who called into this teleconference.

The landlord's agent confirmed the names and spelling for her, the tenant, and the landlord company ("landlord") named in this application. She said that she is a property and strata manager, employed by the landlord. She stated that the landlord is an agent for the owner of the rental unit. She claimed that she had permission to represent the landlord and the owner at this hearing. 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 agent affirmed, under oath, that she would not record this hearing.

I explained the hearing process to the landlord's agent. 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 agent stated that she did not receive the tenant's application for dispute resolution hearing package. She said that she found out about this hearing when she called into the RTB. She claimed that the RTB provided her with the phone number and access code to call into this hearing.

The landlord's agent confirmed that the landlord did not submit any evidence for this hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the landlord's name. The landlord's agent requested this amendment during this hearing. I find no prejudice to either party in making this amendment.

The landlord's agent stated that a process server personally served the tenant with a copy of the landlord's 10 Day Notice on September 7, 2022. She claimed that the effective move-out date on the notice is September 19, 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 September 7, 2022. In this application, the tenant claimed that she personally received the 10 Day Notice on September 8, 2022.

Preliminary Issue – Dismissal of Tenant's 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 appearance or submissions from the tenant, I order the tenant's application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's 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*.

The landlord's agent confirmed that the landlord was seeking an order of possession against the tenant at this hearing.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's 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*.

The landlord's agent confirmed that the landlord was not seeking a monetary order for unpaid rent from June 2022 to January 2023, inclusive, against the tenant. She said that the landlord did not want or require one. She affirmed that she understood and agreed that the landlord could not make a future monetary application for the above unpaid rent, if the landlord did not pursue this claim at this hearing.

Issue to be Decided

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

Background and Evidence

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

The landlord's agent testified regarding the following facts. This tenancy began on November 15, 2020. Monthly rent in the current amount of \$1,218.00 is payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed both parties. The tenant continues to reside in the rental unit.

The landlord's agent stated the following facts. The landlord issued the 10 Day Notice for unpaid rent of \$3,125.00 due on September 1, 2022. The tenant failed to pay rent of \$160.00 for June 2022, \$529.00 for July 2022, \$1,218.00 for August 2022, and \$1,218.00 for September 2022, which is still unpaid to the present date. The tenant paid the full rent of \$1,218.00 for October 2022. The tenant failed to pay rent of \$1,218.00 for November 2022, \$400.00 for December 2022, and \$400.00 for January 2023. The landlord's agent emailed the tenant asking for the rent, and the tenant responded that she was still working on it. The landlord's agent told the tenant that the rent was needed, and the tenant said that she would dispute the landlord's 10 Day

Notice. The landlord requests a 15-day order of possession against the tenant. The landlord does not want a monetary order against the tenant for unpaid rent from June 2022 to January 2023.

Analysis

On a balance of probabilities, I make the following findings based on the undisputed testimony of the landlord's agent 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 5 days after the date the tenant received the notice. In this application, the tenant claimed that she personally received the 10 Day Notice on September 8, 2022. The landlord's agent provided affirmed testimony that the tenant was personally served with the notice on September 7, 2022. The tenant filed this application to dispute the notice on September 14, 2022.

Therefore, the tenant was not within the 5-day time limit to dispute the notice, regardless of whether she received the notice on September 7 or 8, 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 \$3,125.00 due on September 1, 2022, within 5 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 5 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 September 19, 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 September 19, 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 tenant's application. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. Since the effective date of September 19, 2022, on the notice has long passed and the tenant has failed to pay full rent for January 2023 to the landlord, I find that the landlord is entitled to an Order of Possession, effective fifteen (15) days after service on the tenant. The landlord's agent specifically requested a 15-day order of possession at this hearing, in order to give the tenant adequate time to move out.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective fifteen (15) 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.

The landlord is not entitled to recover unpaid rent for the period from June 1, 2022 to January 31, 2023, from the tenant. The landlord is not entitled to file any future claims or applications regarding the above unpaid rent, against the tenant.

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