



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROADSTREET PROPERTIES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL
 CNR-MT, CNC-MT
 OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlord’s application for Dispute Resolution was made on September 8, 2022, to enforce a One-Month Notice to End Tenancy for Cause dated July 25, 2022, and to recover the filing fee for this application. The matter was set for a conference call.

The Tenant’s application for Dispute Resolution was made on October 8, 2022. The Tenant applied to cancel a 10-Day Notice to End Tenancy for Unpaid Rent (the “Notice”) dated September 22, 2022, and to cancel a One-Month Notice to End Tenancy for Cause Dated July 25, 2022. As the Landlord had already filed to enforce the same One-Month Notice to End Tenancy for Cause, the Tenant’s application was crossed with the Landlord’s applications to be heard at the same time

The Landlord filed a Direct Request Application on November 1, 2022. The Landlord applied for an order of possession to enforce a 10-Day Notice for Unpaid Rent (the “Notice”) dated September 22, 2022, for a monetary order for unpaid rent and to recover their filing fee. As the Tenant had already filed a dispute of the Notice, this second application of the Landlord was crossed with the Tenant’s application to be heard at the same time.

An Agent for the Landlord (the “Landlord”) and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were

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 oral and written evidence 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.

Preliminary Matter – *Tenant's Conduct/Cautioned*

During the hearing, the Tenant was cautioned several times regarding personal conduct towards this Arbitrator and the Landlord. The Tenant was advised of the expected appropriate conduct during these proceedings and cautioned that further outbursts could result in their removal from these proceedings.

The Tenant was also cautioned regarding their repeated interruptions during these proceedings; the Tenant was provided with two warnings to stop interrupting. However, when the Tenant continued to interrupt, and the Tenant's phone line was muted in order to allow the Landlord to complete their testimony. The Tenant was invited back to the proceeding once the Landlord was finished.

Additionally, when this Arbitrator attempted to deliver their final decision, verbally, for this case, the Tenant interrupted by speaking loudly over top of this Arbitrator. Due to this the Tenant's phone line was muted again.

This Arbitrator ended these proceedings by repeating their final decision on the applications and disconnecting all parties from these proceedings.

Preliminary Issues – *Issues Withdrawn*

During the hearing, the Landlord withdrew their application to enforce the One-month Notice to end the Tenancy for cause. Stating that they had given a letter to the Tenant advising them that they were cancelling that Notice.

The Tenant agreed that they received a letter from the Landlord cancelling the One-month Notice to end tenancy but stated that the Landlord also cancelled the 10-Day Notice to end tenancy for non-payment of rent in that letter.

The Landlord testified that the letter only cancelled the One-Month notice to end tenancy for cause. Neither party submitted a copy of the letter into documentary evidence. As I do not have a copy of the letter in question in evidence, I am not able to determine what was communicated in that letter.

However, I find it reasonable to allow the Landlord to withdraw their application filed on September 8, 2022, to enforce a One-Month Notice to End Tenancy for Cause dated July 25, 2022, and to recover the filing fee for this application.

I will proceed in this hearing on the Tenant's application and the Landlord's remaining application to enforce a 10-Day Notice to end tenancy for non-payment of rent, for a monetary order for unpaid rent and to recover their filing fee for that application.

Issues to be Decided

- Is the Tenant entitled to more time to file their application to dispute the Notice?
- Should the 10-Day Notice dated September 22, 2022, be cancelled?
- Should the One-Month Notice dated July 25, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that the tenancy began on June 1, 2020, as a one-year fixed term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. Rent in the amount of \$1,378.00 is to be paid by the first day of each month. The parties agreed that a security deposit of \$500.00 and a \$200.00 pet damage deposit were paid to the Landlord for this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the 10-Day Notice to the Tenant on September 22, 2022, by posting it to the front door of the rental unit. The 10-Day Notice has an effective date of October 2, 2022, and an outstanding rent amount of \$1,378.00.

The Landlord testified that the Tenant had only paid \$900.00 of the \$1,378.00 rent outstanding for September 2022 and that the rent for this tenancy was currently outstanding in the amount of \$5,990.00, consisting of September 2022 rent in the amount of \$478.00, October 2022 rent in the amount of \$1,378.00, November 2022 rent in the amount of \$1,378.00, December 2022 rent in the amount of \$1,378.00 and, January 2023 rent in the amount of \$1,378.00 and also not paid the rent for January 2023. The Landlord submitted two rent receipts for use and occupancy only.

The Tenant testified that they agreed they had not paid the rent for September, October, November, December 2022, and January 2023. The Tenant testified that they had not paid the rent because the Landlord did nothing regarding their complaints about their neighbour.

The Tenant was provided with two opportunities to provide testimony regarding their claim for more time to file to dispute the 10-day Notice.

The Landlord requested that the Notice be enforced and that an order of possession and a monetary order for the unpaid rent be issued, as the Tenant did not pay the rent within five days of receiving the 10-Day Notice as required.

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 Tenant received the 10-Day notice on September 25, 2022, three days after it was posted to the front door of the rental unit, pursuant to section 90 of the *Act*. I have reviewed the Tenant's application for dispute resolution, and I find that the Tenant filed to dispute the Notice on October 12, 2022, which is outside the statutory time limit.

The Tenant has also requested additional time to file to dispute the Notice, pursuant to section 66 of the *Act*. Section 66 of the *Act* states that an extension of time may only be granted if the party requesting the extension has proven that an exceptional circumstance has occurred that prohibited them from filing their application within the statutory time limit.

Director's orders: changing time limits

- 66** (1) *The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59*
- (3) *[starting proceedings] or 81 (4) [decision on application for review].*

In this case, the Tenant offered no testimony regarding their request for more time to file to dispute these Notices. I have reviewed the Notice to end tenancy submitted into evidence by the Tenant, and I noted that page two of the Notice clearly states that if the tenant does not dispute the Notice within 10 days the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice. I find that the information advising the Tenant of how to dispute the notice and the consequences for not disputing the notice had been clearly provided to the Tenant. Consequently, I dismiss the Tenant's request for more time to dispute the Notices, pursuant to section 66 of the *Act*.

As the Tenant failed in their application for more time to dispute the Notice, and the Tenant failed to dispute the Notice within the statutory time limit. I find that the Tenant is conclusively presumed to have excepted the Notice and that this tenancy would end in accordance with that Notice. Therefore, I dismiss the Tenant's request for additional time to file to dispute the Notice.

As for the validity of the Notice, I accept the agreed-upon testimony of both parties that the Tenant had not paid the outstanding rent as stated on the 10-Day Notice, within the required five days, and that they have also not paid the rent for the subsequent months of October, November, December 2022, and January 2023. Therefore, I find that the Tenant is in breach of section 26 of the *Act* by not paying the rent in accordance with the tenancy agreement and I dismiss the Tenant's application to cancel the 10-Day 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 Tenant's 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 Tenant. Should the Tenant 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 find that the Landlord has proven their entitlement to a monetary award in the amount of \$5,990.00 for the outstanding rent, consisting of September 2022 rent in the amount of \$478.00, October 2022 rent in the amount of \$1,378.00, November 2022 rent in the amount of \$1,378.00, December 2022 rent in the amount of \$1,378.00 and, January 2023 rent in the amount of \$1,378.00. I grant permission to the Landlord to retain the security and pet damage deposits for this tenancy in partial satisfaction of this award.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for their application.

I grant the Landlord a monetary order in the amount of \$5,390.00, consisting of \$5,990.00.00 in unpaid rent, less the security deposit of \$500.00 and the pet damage deposit of \$200.00 that the Landlord is holding for this tenancy.

As this tenancy is ending in accordance with the 10-Day Notice, I find that there is no need to address the Tenant's additional claim to dispute the One-Month Notice.

Conclusion

I grant an **Order of Possession** to the Landlord effective **two days** after service of this Order on the Tenant. Should the Tenant 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 **\$5,390.00**. 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 Tenant 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 27, 2023

Residential Tenancy Branch