



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

The Tenant seeks an order pursuant to s. 46 of the *Residential Tenancy Act* (the “*Act*”) cancelling a 10-Day Notice to End Tenancy signed January 5, 2023 (the “10-Day Notice”).

J.S. appeared as the Landlord. The Tenant did not attend the hearing, 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 Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure and concluded at 9:13 AM without their participation.

The Landlord 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 Landlord acknowledges receipt of the Notice of Dispute Resolution. Based on its acknowledged receipt, I find that pursuant to s. 71(2) of the *Act* that the Landlord was sufficiently served with the Tenant’s application.

The Landlord testifies that she served her response evidence on the Tenant by way of registered mail sent on January 27, 2023. Based on the undisputed testimony of the Landlord, I find that the Landlord served her evidence in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the Landlord’s

response evidence on February 1, 2023, which is on the last day permitted under Rule 3.15 of the Rules of Procedure.

Issues to be Decided

- 1) Is the 10-Day Notice enforceable?
- 2) If so, is the Landlord entitled to an order of possession and an 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 Landlord confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on March 15, 2022.
- Rent of \$2,000.00 is due on the 15th day of each month.
- The Tenant paid a security deposit \$1,000.00 and pet damage deposit of \$1,000.00.

The Landlord provides a copy of the tenancy agreement in her evidence.

The Landlord advises that the Tenant failed to pay rent on December 15, 2022. The Landlord testified to several conversations she had with the Tenant in which the Tenant offered to pay rent in full on December 16, 2022, then in two \$1,000.00 portions paid on December 30, 2022 and January 13, 2023. The Landlord advises that the Tenant never made payment of the rent and did not comply with the alternate arrangements offered to the Landlord.

The Landlord advises that the 10-Day Notice was served on the Tenant due to non-payment of December's rent and that she did so by posting it to the Tenant's door on January 5, 2023. The Landlord's evidence includes a proof of service form, signed by the Landlord and witnessed by J.P..

I am provided with a copy of the 10-Day Notice by the Landlord. In it, it lists \$2,000.00 in arrears from December 15, 2022 and an effective date of January 18, 2023. The Landlord testifies that no rent has been paid on these arrears and that the Tenant failed

to pay rent on January 15, 2023 as well. I am further advised that the Tenant was short on rent for October 2022 in the amount of \$600.00 such that total arrears in rent are \$4,600.00.

The Landlord further testifies that the Tenant has advised her that she would be moving out on February 8, 2023, which is the day of the hearing of her application. The Landlord confirms that the Tenant continues to reside in the rental unit and that she has not yet taken back possession.

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 Landlord's undisputed evidence that the 10-Day Notice was posted to the Tenant's door on January 5, 2023, which is confirmed by the proof of service form provided. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the 10-Day Notice on January 8, 2023.

Upon review of the information on file and in consideration with Rule 2.6 of the Rules of Procedure, I find that the Tenant filed their application on January 9, 2023. I further find that she filed her application within the 5 days permitted to her under s. 46(4) of the *Act*.

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 the Landlord's undisputed evidence that the Tenant failed to pay rent on December 15, 2022 and did not pay that amount at all. I further accept that the Tenant failed to make good on the various arrangements made for the payment of December's rent such that estoppel would not be applicable. I find that the 10-Day Notice was properly issued. The Tenant's application to cancel the 10-Day 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. I accept that the Landlord has not yet taken back possession of the rental unit such that the issue of the order of possession is still live. As the 10-Day Notice complies with s. 52 of the *Act* and the Tenant's application to cancel it was dismissed, I find that the Landlord is entitled to an order of possession and shall receive that 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*.

I find that the tenancy has ended on the day of the hearing. I accept that the Tenant failed to pay rent for December 2022 and January 2023. I further accept that she was in arrears of \$600.00 from October 2022. I find that the Landlord has demonstrated arrears of rent totalling \$4,600.00 (\$600.00 + (\$2,000.00 x 2)). Pursuant to s. 72(2) of the *Act*, I direct that the Landlord retain the security deposit and pet damage deposit in partial satisfaction of the arrears.

I make note that the Landlord has provided a monetary order worksheet in her evidence claiming amounts in excess of the unpaid rent. The Landlord has not filed an application under s. 67 of the *Act* for monetary compensation, such that any order for compensation is limited to the application of s. 55(1.1). As mentioned above, this is strictly limited to unpaid rent and cannot include other claims. I make no comment with respect to the other claims as they are not strictly before me. Should the Landlord wish to advance them, she will have to file her own application.

Conclusion

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

The Landlord is entitled to an order of possession pursuant to s. 55(1) of the *Act*. I order that the Tenant provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving this order.

The Landlord is entitled to an order for unpaid rent pursuant to s. 55(1.1) of the *Act*, which in this case I find to be \$4,600.00. Pursuant to s. 72(2) of the *Act*, I direct that the Landlord retain the security deposit and pet damage deposit, totalling \$2,000.00, in partial satisfaction of the unpaid rent claim. Taking this into account, I order that the Tenant pay **\$2,600.00** (\$4,600.00 - \$2,000.00) to the Landlord.

It is the Landlord's obligation to serve these orders on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenant does not comply with the order of possession, it may be filed by the Landlord 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: February 08, 2023

Residential Tenancy Branch