



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

The Tenants seek an order pursuant to s. 46 of the *Residential Tenancy Act* (the “Act”) cancelling a 10-Day Notice to End Tenancy signed on January 2, 2023 (the “10-Day Notice”).

S.H. appeared as the Tenant. H.L. appeared as the Landlord’s agent. L.W. also attended and identified herself as the Landlord’s spouse. Though being affirmed at the outset of the hearing, L.W. provided no submissions or testimony.

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 having served the Landlord with the Notice of Dispute Resolution and their evidence. The Landlord’s agent acknowledges receipt of the Notice of Dispute Resolution, though initially raised issue with the evidence. Upon review, however, the Landlord’s agent confirms receipt of the evidence. Based on its acknowledged receipt, I find that pursuant to s. 71(2) of the *Act*, the Landlord was sufficiently served with the Tenants’ application and evidence.

The Landlord’s agent advises having served the Tenant with its response evidence on January 26, 2023. The Tenant acknowledges receiving photographs and a copy of a monetary order worksheet, but nothing else. The Landlord’s agent directs me to an email in its evidence as proof of service.

I have reviewed the email provided. It is unclear on its contents which attachments were served. I am cognizant that when service is in issue, the party that purports to rely on the document must demonstrate that it had been served. Further, the Landlord has provided approximately 30 pages of evidence to the Residential Tenancy Branch, which greatly exceeds what the Tenant states was received.

In this instance, I have a denial of receipt of much of the evidence and the Landlord's proof of service is unclear as to what has and has not been served. Accordingly, I find that the Landlord has failed to demonstrate service of its evidence outside of the confirmed receipt of the monetary order worksheet mentioned, which I find was served pursuant to s. 71(2) of the *Act*. The Landlord has failed to show the other evidence was served such that it shall not be included or considered by me.

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 parties confirmed the following aspects with respect to the tenancy:

- The Tenants moved into the rental unit on December 15, 2022.
- Rent of \$2,300.00 is due on the first of each month.
- The Tenants were to pay ½ a month's rent for December 2022.

I am provided with a copy of the tenancy agreement by the Tenants, which mentions that a security deposit of \$1,150.00 was to be paid and a pet damage deposit of \$500.00 was to be paid on February 1, 2023. The Landlord's agent says that only \$1,000.00 of the security deposit had been paid, with the balance left owing.

The Landlord's agent says that the Tenants failed to fully pay rent for December 2022 and failed to pay rent for January 1, 2023 at all. The Landlord's agent advises that the 10-Day Notice was issued on this basis and that it was posted to the Tenants' door on

January 7, 2023. The Tenant acknowledges receiving the 10-Day Notice on January 7, 2023. I am provided with a copy of the 10-Day Notice by the Tenants.

According to the Landlord's agent, the Landlord received a \$500.00 payment from the Tenants on January 18, 2023 and that no other payment had been received. The Landlord's agent further advises that the Tenants failed to pay rent on February 1, 2023 such that in total arrears currently sit at \$4,250.00.

The Tenant acknowledges and confirms the payment history stated by the agent at the hearing. She says that \$150.00 was owed for December 2022, that rent of \$2,300.00 was unpaid on January 1, 2023 and February 1, 2023, and that a \$500.00 payment was made to the Landlord on January 18, 2023. The Tenant, however, argued that they have been the victim of fraud and that their accounts have been subject to locks, which has adversely impacted their ability to make payment on rent.

The Tenants' evidence includes copies of rent cheques of \$2,100.00 for January 31, 2023, \$2,300.00 for February 3, 2023, and \$500.00 for February 3, 2023. The Landlord's agent says that the rent cheques bounced as there were insufficient funds. The Tenant acknowledges that the cheques had bounced but says that the February rent cheque has not been paid.

I am also provided with a copy a 10-Day Notice to End Tenancy signed on January 12, 2023, which I am told was served via registered mail send on the same date. The Tenant acknowledges receiving it on January 25, 2023. The Landlord's agent advises that the second notice is a replication of the 10-Day Notice. I am told that the 10-Day Notice lists it was served in person and that the Landlord was concerned there might be a technical deficiency such that a new notice was issued.

The parties confirm the Tenants continue to reside within the rental unit.

Analysis

The Tenants apply to cancel 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.

In this instance, I accept the undisputed evidence of that the 10-Day Notice was posted to the Tenants' door on January 7, 2023. I find that this was done in accordance with s. 88 of the *Act*. As per the Tenant's testimony, I accept that it was received on January 7, 2023.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenants filed their application on January 8, 2023. Accordingly, I find that this was done within the 5 days permitted to time 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). The second page of the notice lists that the notice was personally served. There is no disputing that it was posted to the door and that the Tenants received it on January 7, 2023. I find that this small error in no way invalidates the form or somehow renders the 10-Day Notice deficient. It is not relevant content as per the requirements set out under s. 52 of the *Act*.

I accept the undisputed testimony of the parties that the Tenants were in arrears in rent for December 2022 in the amount of \$150.00 and failed to pay rent on January 1, 2023. I further accept that the Tenants' made a \$500.00 payment on January 18, 2023, which neither paid the arrears listed within the 10-Day Notice nor was it made within the 5 days permitted under s. 46(4). Accordingly, I am satisfied that the 10-Day Notice was properly issued and was not cancelled pursuant to s. 46(4) of the *Act*.

The Tenant argues that they have been unable to pay rent due to being a victim of fraud, which has locked their accounts. Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. The *Act* proscribes a set of limited circumstances in which monies claimed by the Tenant can be deducted from rent, which include:

1. Where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2)).
2. The reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8)).
3. Where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)).
4. As ordered by the Director pursuant to ss. 65 and 72.

The *Act* makes no provision to excuse a tenant's rent obligations due to circumstances beyond their control, such as a locked bank account. In other words, the Tenant's rationale is no excuse for failing to pay rent when it is due.

I find that the 10-Day Notice was properly issued such that the Tenants' application to cancel the notice is dismissed without leave to reapply.

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. As that is the case here, 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*.

Accordingly, I find that the tenancy ended on February 6, 2023. I accept the undisputed evidence from the Landlord's agent that the Tenants failed to pay rent of \$2,300.00 on January 1, 2023 and February 1, 2023. I further accept that the Tenants were in arrears of \$150.00 for rent in December 2022 and that a payment of \$500.00 was made by the Tenants on January 18, 2022. Accordingly, I find that the Landlord is entitled to an order

for unpaid rent of \$4,250.00 (\$150.00 + \$2,300.00 + \$2,300.00 - \$500.00) and shall receive that order.

Conclusion

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

Pursuant to s. 55(1) of the *Act*, the Landlord is entitled to an order of possession. The Tenants shall give vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order.

Pursuant to s. 55(1.1) of the *Act*, the Landlord is entitled to an order for unpaid rent. The Tenants shall pay **\$4,250.00** to the Landlord.

It is the Landlord's obligation to serve these orders on the Tenants. If the Tenants do 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 Tenants do 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 06, 2023

Residential Tenancy Branch