



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”).

P.S. appeared as the Landlord’s agent. The Tenants did not attend, 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 Tenants did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure and concluded at 9:10 AM without their participation.

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

The Landlord’s agent further advises that the Tenants were served with the Landlord’s response evidence by way of registered mail sent on January 18, 2023. The Landlord provides a copy of the registered mail tracking receipt as proof of service of its evidence. I find that the Landlord has served its evidence on the Tenants in accordance with s. 89(1) of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Landlord’s response evidence was received by the Tenants on January 23, 2023.

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's agent confirms the following aspects with respect to the tenancy:

- Rent of \$2,300.00 is due on the first day of each month.
- A security deposit and pet damage deposit of \$1,150.00 each were paid by the Tenants.

The Landlord's agent advises that the Landlord took over management of the property on October 1, 2022 and that the Tenants were residing within the rental unit prior to that time. In its evidence, the Landlord provides a copy of the tenancy agreement signed by the parties on October 1, 2022.

The Landlord's agent advises that the Tenants failed to pay rent on January 1, 2023 and that the Landlord served the 10-Day Notice by posting it to the Tenants' door on January 2, 2023. I am provided with a copy of the 10-Day Notice by the Landlord, a proof of service form confirming service, and photographs of the notice posted to the door. The Landlord further advises that the Tenants failed to pay rent for January 2023 and failed to pay rent on February 1, 2023. I am told that the Tenants continue to reside within the rental unit.

Analysis

The Tenant applies 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 the Landlord that the 10-Day Notice was posted to the Tenants' door on January 2, 2023. I find that this was done in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the 10-Day Notice was received by the Tenant on January 5, 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).

I accept the undisputed evidence of the Landlord's agent that the Tenants failed to pay rent on January 1, 2023 and have made no payment on this amount after the 10-Day Notice was served. Accordingly, I find that the Landlord properly issued the 10-Day Notice and that it has not been rendered ineffective by its payment within 5 days as permitted by s. 46(4) of the *Act*. The Tenants' 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. 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. Accordingly, I find that the Landlord is entitled to an order for unpaid rent of \$4,600.00 (\$2,300.00 + \$2,300.00) 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 **\$4,600.00** 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