



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 4, 2023 (the “10-Day Notice”).

M.G. appeared as the Landlord. The Landlord was joined by D.P. who assisted her in her submissions and acted as her agent.

The Tenants 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 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 1:11 PM without their participation.

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 Landlord acknowledges receiving the Notice of Dispute Resolution. As such, I find that pursuant to s. 71(2) of the *Act* that the Landlord was sufficiently served with the Tenants’ application.

The Landlord further advises that the Tenants were personally served with her response evidence on January 11, 2023. I find that the Landlord personally served her response evidence on the Tenants in accordance with s. 89 of the *Act* and that it was received by the Tenants on January 11, 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 confirms the following details with respect to the tenancy:

- The Tenants moved into the rental unit on December 29, 2021.
- Rent of \$1,650.00 is due on the first of each month.
- A security deposit of \$825.00 and a pet damage deposit of \$500.00 was paid by the Tenants.

The Landlord provides a copy of the tenancy agreement in her evidence. In it, it circles that rent is due on the 31st of each month. As mentioned above, the Landlord confirmed rent was due on the first.

I am advised by the Landlord and her agent that the Tenants failed to pay rent on December 1, 2022 and on January 1, 2023. I am further advised that the 10-Day Notice was issued on this basis and that it was personally served on the Tenants on January 4, 2023. The Landlord's evidence includes a proof of service form confirming service of the 10-Day Notice.

The Landlord's agent confirms that no rent was paid by the Tenants after receiving the 10-Day Notice. It was submitted that current rent arrears total \$4,950.00 as rent was not paid on February 1, 2023.

The Landlord advises that she believes the Tenants may have vacated the rental unit as she had been notified by her neighbour yesterday that a u-haul attended the property and that the door had been left ajar. The Landlord further advises that she has not attended the property to confirm whether the Tenants have, in fact, moved out and still sought an order of possession.

Analysis

The Tenants seek 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 evidence that the 10-Day Notice was personally served on the Tenants on January 4, 2023, both confirmed in the proof of service form and by her at the hearing. I find that this was in accordance with s. 88 of the *Act*. I further find that the Tenants received the 10-Day Notice on January 4, 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 5, 2023. Accordingly, they filed their application disputing the 10-Day Notice within the 5 days permitted 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 Landlord advises that rent for December 2022 and January 2023 have not been paid by the Tenants. I accept the Landlord's undisputed evidence that the Tenants have failed to pay rent and that this constitutes grounds for issuing the 10-Day Notice. I further accept that no payment was received by the Landlord which may have rendered the notice ineffective pursuant to s. 46(4) of the *Act*. Accordingly, I find that the Landlord has demonstrated the 10-Day Notice was properly issued. The Tenants' application to cancel the notice is 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 note that the Landlord indicates that the Tenants may have vacated. However, I do not have clear confirmation when, or if, this occurred and the Landlord has not taken back possession. 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.

The tenancy agreement clearly marks the 31st as the due date by circling off that portion of the form. Despite this, the Landlord insists rent is due on the first. In this instance, I have difficulties ascertaining when rent is due, though I am satisfied that the Tenant was in arrears of rent when the 10-Day Notice was issued. To the extent that there is a discrepancy, I prefer the date listed within the tenancy agreement, which is signed by all the parties. I find that rent was due at the end of each month. Accordingly, I find that the Landlord is entitled to an order for unpaid rent for rent due December 31, 2022 and January 31, 2023 totalling \$3,300.00 (\$1,650.00 + \$1,650.00).

Conclusion

The Tenant's application cancelling 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 **\$3,300.00** 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