



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on October 5, 2022 seeking an order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice A”). The Tenant filed a second Application for a separate 10-Day Notice for Unpaid rent (the “10-Day Notice B”) on November 15, 2022.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 17, 2023. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

The Tenant and the Landlord attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

Preliminary Matter – Notices of Dispute Resolution Proceeding and disclosed evidence

The Landlord confirmed they received the Notice of Dispute Resolution Proceeding from the Tenant in regard to their initial Application; however, they did not receive notice of the Tenant’s second Application.

The Act s. 59(3) sets the duty for an applicant to provide the Notice of Dispute Resolution Proceeding for each Application to the Respondent. I find the Tenant did not serve the Notice of Dispute Resolution Proceeding for their second November 15 Application. The Act s. 89 gives the rules for service of the Application. This is by leaving a copy with the person or their agent, or sending a copy via registered mail.

I find the Tenant did not provide a copy of the Notice of Dispute Resolution Proceeding for their second Application to the Landlord either through mail or in person. For this reason, I dismiss the Tenant's second Application – to dispute the 10-Day Notice B – with leave to reapply.

The Tenant confirmed they received evidence from the Landlord on February 4, 2023. The Landlord provided a record showing delivery of this material by registered mail. The Tenant also confirmed they did not prepare documentary evidence in advance for this hearing. On this basis, the hearing proceeded.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the 10-Day Notice A?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit?

Background and Evidence

The Landlord provided a copy of the tenancy agreement in their evidence, and both parties confirmed the basic relevant terms: the rent amount of \$1,050, payable on the first of each month; and one-third of utilities payable at the rental unit property. The tenancy started on February 1, 2021, and both parties confirmed the Tenant still resides in the rental unit.

In their Application, the Tenant provided that the Landlord served a 10-Day Notice on October 2, 2022. This was attached to the door at the rental unit. The copy in the Landlord's evidence shows the date of October 2, 2022, with the final end-of-tenancy date of October 12, 2022.

The Landlord provided a statement of account, up to date as of February 1, 2023, in their evidence. This set out repeated late payments of rent and utilities since September 2022 onwards. The Tenant verified that they received this document. The outstanding balance, confirmed with the Tenant in the hearing, was \$5,630.

The Landlord provided copies of utilities bills for gas. These show the calculation for each month to account for the one-third amount owing by the Tenant. These amounts

were added to the Landlord's statement of account and reflected in the outstanding balance.

The Tenant stated plainly in the hearing that they were owing rent amounts, and pledged to repay those amounts. Their income situation had changed as of the date of the hearing. A witness attended with the Tenant to verify that information to the Landlord in the hearing, and the witness – who carries a position overseeing the administration of the Tenant's income – provided their contact information directly to the Landlord, as a contact and source of information for the Landlord.

Analysis

The *Act* s. 46 states, in part:

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.

The *Act* s. 52 states:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) . . . state the grounds for ending the tenancy,
- . . . and
- (e) when given by a landlord, be in the approved form.

As stated in the hearing, I find the Tenant was aware of all the relevant information. I am satisfied the Tenant was at all times fully informed of the end of tenancy, the timelines thereof, and the reasons why the Landlord issued the 10-Day Notice A on October 2, 2022.

Moreover, the Tenant was fully aware of their right to either pay the rent or apply for dispute resolution, as stated on the 10-Day Notice A. The Tenant did proceed with their Application for Dispute Resolution on October 5, 2022.

The *Act* s. 26 of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

I find the Tenant did not have the right to withhold payment of rent. The Tenant testified that they were short on income and managing significant health issues.

The Tenant agreed to the rent amounts owing. They acknowledged in the hearing that the Landlord was entitled to an order of possession and monetary order.

For these reasons, I dismiss the Tenant's Application to cancel the 10-Day Notice A. The Landlord is legally entitled to an order of possession and a monetary order for amounts owing, as per s. 55(1.1).

Under s. 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied the Notice to end tenancy complies with the requirements under s. 52 regarding form and content, I must grant a landlord an order of possession.

I find the Landlord served the 10-Day Notice with complete details on October 2, 2022; therefore, this is in the approved form as specified in the *Act*.

Given my finding that the 10-Day Notice complies with the requirements of form and content, the Landlord is entitled to an order of possession on the effective date indicated.

The *Act* s. 55(1.1) specifies that I must grant an order requiring the payment of the unpaid rent. In line with this, I grant the landlord a monetary order for the amount of \$5,630 which is the amount owing for February 1, 2023.

I acknowledge that both parties were open to a discussion of a repayment plan from the Tenant to the Landlord. I reiterated that the Landlord is legally entitled to the two orders as per the *Act*; however, the Landlord has discretion on how or when to serve the orders to the Tenant, in order to enforce their legal rights if necessary.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for a cancellation of the 10-Day Notice, without leave to reapply.

For the reasons above, I grant an Order of Possession to the landlords **effective two days after they serve it to the Tenant**. The Landlord, at their discretion, must serve this Order of Possession to 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 order the Tenant to pay the Landlord the amount of \$5,630. I grant the Landlord a monetary order for this amount. The Landlord may file this monetary order in the Provincial Court (Small Claims) and where it will be 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 s. 9.1(1) of the *Act*.

Dated: February 17, 2023

Residential Tenancy Branch