



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR CNC OLC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on February 13, 2023. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the *Act*):

- to cancel the Landlord's 1 Month Notices to End Tenancy for Cause (the 1 Month Notices); and,
- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice)
- request for an order for the Landlord to comply with the Act.

The Landlords and the Tenant attended the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of all packages, and no service issues were raised.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss the following ground, with leave to reapply:

- request for an order for the Landlord to comply with the Act.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 10 Day Notice cancelled?
- Is the Tenant entitled to have the Landlord's 1 Month Notices cancelled?
- If not, is the Landlord entitled to an Order of Possession or a monetary order for unpaid rent?

Background and Evidence

Both parties agreed that monthly rent is set at \$695.00, and is due on the first of the month.

The Tenant stated he received the 10 Day Notice on October 8, 2022. A copy of the 10 Day Notice was provided into evidence. The Tenant also stated that he received 2 different 1 Month Notices, the first was on September 29, 2022 (due to the police incident), and another on October 3, 2022 (for repeated late payment of rent). Copies of those notices were also provided into evidence.

With respect to the 10 Day Notice, the Landlord stated that they issued it on October 8, 2022, because the Tenant failed to pay October rent. The Landlord stated that the Tenant did not come and try to pay until October 21, 2022. The Landlord stated that when the Tenant tried to pay rent, in cash, on October 21, 2022, she refused the payment from the Tenant and told him that she would have to check with her boss if she

could accept the rent, given the numerous Notices to End Tenancy that had been issued.

The Landlord stated that after she checked with the RTB and her boss, she realized she could accept rent as “use and occupancy” only, and on October 28, 2022, the Landlord communicated this to the Tenant (that they wanted rent, and it would be for use and occupancy only). However, no rent was paid by the Tenant. The Landlord stated that the Tenant now owes rent for October, November, December, January, and February $5 \times \$695.00 = \$3,475.00$.

The Tenant does not refute that he currently owes rent for the above months. The Tenant spoke to issues with his finances and employment earlier in the year. The Tenant stated that he tried to pay rent on October 21, 2022, and he was refused by the Landlord. The Tenant stated that he didn't pay anything after that because he was told he should wait for the outcome of this hearing before paying his arrears.

Both parties spoke to issues surrounding the 1 Month Notices as well. However, my focus in this decision is on the 10 Day Notice.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I make the following findings:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution (and provide a valid reason for withholding rent).

I find the Tenant owed rent for the month of October 2022 at the time the 10 Day Notice was issued on October 8, 2022. The Tenant acknowledged receipt of the 10 Day Notice on October 8, 2022.

After receiving the 10 Day Notice, the Tenant had 5 days to pay rent in full or file an application for dispute resolution, along with a valid reason to withhold rent. In this case, I note the Tenant tried to pay his outstanding balance of October rent on October 21, 2022. Although this payment was refused by the Landlord at the time, I note the Tenant was required to pay his arrears within 5 days of receiving the 10 Day Notice. This means the Tenant was required to pay all outstanding rent by October 13, 2022. There is no evidence this was done, nor is there evidence that the Tenant tried to pay in full within the allowable 5 day window. I also find there is insufficient evidence that the Tenant had any legal right to withhold the rent, and not pay in full, within 5 days. Given this was not done, I dismiss the Tenant's application to cancel the 10 Day Notice.

Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

[My emphasis added]

Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find the 10 Day Notice issued on October 8, 2022, complies with section 52 of the Act, in terms of the form and content requirements. As such, I find the Landlord is entitled to an order of possession, pursuant to section 55 of the Act. This order will be effective 2 days after it is served on the Tenant.

Next, I turn to section 55 (1.1) of the Act, which specifies that I must grant a monetary order for outstanding unpaid rent, provided a valid 10 Day Notice was issued, and if the Tenant's application to cancel the 10 Day Notice is dismissed.

The Landlord testified that the Tenant owes rent for October – February 202, 5 months. The Tenant did not refute that he owes these amounts at this time.

I find the Landlord is entitled to a monetary order for these amounts, as they remain unpaid. The Landlord is entitled to a monetary order of \$3,475.00.

Given my findings thus far, it is not necessary to consider the 1 Month Notices.

Conclusion

Pursuant to section 55 of the Act, the Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$3,475.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 14, 2023

Residential Tenancy Branch