



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, PSF, OLC

Introduction

The hearing was convened as a result of the tenant's application for dispute resolution ("Application") under the Residential Tenancy *Act* (the "*Act*"). The tenant requests;

- The cancelation of a 10 Day Notice to End Tenancy signed on September 18, 2022 (the "10 Day Notice") and;
- for the landlord to provide services or facilities required by the tenancy agreement or law and;
- for the landlord to comply with the *Act*, regulation and/or the tenancy agreement.

Parties appeared for both the landlord and the tenant. 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.

No issues were raised by landlord during the hearing regarding service of application materials or the other side's evidence, therefore I find that pursuant to s. 71(2) of the *Act* that Tenants' application materials were sufficiently served to the landlord.

Based on the testimony provided by both parties during the hearing I find that the 10 Day Notice was served by attaching a copy to a door at the address at which the person resides and therefore service was compliant with section 88 (g) of the *Act* which confirms this is a valid method of service. The tenants confirmed receipt of the Notice on the same day it was served; September 18, 2022.

Both parties confirmed they had received the other side's evidence.

Preliminary Issue – Severing Issues

The Tenant applied for multiple remedies under the *Act*, some 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 reviewing the issues raised by the tenant, I determined that the most pressing and urgent issue is the tenant's request to cancel the Notice and I exercised my discretion to dismiss without leave to re-apply the tenant's request for the landlord to comply with the *Act* regulation and/or the tenancy agreement and provide services or facilities required by the tenancy agreement or law.

Issues to be Decided

- 1) Should the 10 Day Notice be cancelled?
- 2) If not, is the landlord entitled to an order of possession?
- 3) Is the landlord entitled to 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 testified the tenancy started on May 15, 2020 with monthly rent of \$1,600.00 due on the first of the month. The landlord also testified that a security deposit of \$800.00 was taken, which they still retain, and that there was no pet damage deposit taken. The landlord stated they served a rent increase with 3 months notice to bring rent to \$1,624.00 taking effect January 1, 2023. The tenant agreed with the landlord's testimony.

The tenant initially testified they still occupied the rental unit. The landlord stated they received information the unit became empty and they saw a moving truck at the property the previous week. The tenant modified their testimony to state that they were

“house sitting” and that they “come and go” from the unit but that their son had moved out the previous Friday.

Regarding the subject of unpaid rent, the landlord testified that in December 2021 the tenant was not able to make full payment of rent. They stated they allowed the tenant to make payments when they could and that no rent was paid for January 2022, \$550.00 was paid in February 2022 and from March 2022 to July 2022 inclusive, an extra \$320.00 per month was paid by the tenant, making a total monthly payment of \$1,920.00 for these months. The landlord confirmed that for August 2022, \$1,200.00 was paid and \$700.00 was paid for September 2022.

The landlord testified they communicated with the tenant via email regarding the rental arrears and served the 10 Day Notice on September 18, 2022 by attaching it to the door of the rental unit and the tenant confirmed receipt on the same day. A copy of the Notice was provided as evidence and lists the outstanding balance as \$4,850.00 as of September 1, 2022. The landlord testified no rent has been received since issuing the Notice and provided a spreadsheet breaking down the rent payments received and still owing throughout the duration of the tenancy. The total outstanding rent on the document is \$11,273.00.

The tenant reviewed the landlord’s evidence during the hearing and confirmed the figure of \$11,273.00 for outstanding rent was correct. The tenant also received a sum of \$350.00 from an organization to assist with rent payments. After review of their records, the landlord confirmed receipt of \$350.00 in December 2021 which they hadn’t accounted for on their spreadsheet as it was not clear why they had received the funds. The parties agreed that the correct outstanding balance for unpaid rent should be amended to \$10,923.00.

Analysis

The tenant is requesting an order cancelling the 10 Day Notice.

Section 46 (1) of the *Act* states that, 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. Section 46 (4) of the *Act* states that a tenant has 5 days from having received a 10-day notice 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 accordance with section 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 testimony of the parties that no rent payments were made by the tenant since the issuing of the 10 Day Notice and that at the time of the hearing the outstanding amount of rent was \$10,923.00.

Section 26(1) of the *Act* states that 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* sets out limited circumstances in which monies claimed by the tenant can be deducted from rent, which include when a tenant has paid a security or pet deposit above the allowed amount, reimbursement of costs incurred by the tenant for emergency repairs, when a landlord collects rent for a rent increase that does not comply with the Regulation, or as ordered by a Director.

The tenant put forward no evidence to indicate that any of the above circumstances are applicable, nor are any apparent to me. Though the tenant put forward clear and convincing testimony regarding financial hardship, the *Act* does not allow me to consider this when a request to cancel a 10 Day Notice is made. As the 10 Day Notice was valid and was issued properly, I dismiss the tenants application to cancel 10 Day the Notice.

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. Accordingly, I hereby grant the landlord an order of possession.

I find that the tenancy ended on February 7, 2023 and in accordance with the undisputed testimony of the parties I find that the total outstanding rent owed by the

tenant to the landlord is \$10,923.00. I therefore authorize the landlord to retain the security deposit in accordance with section 38 (4) (b) and grant a monetary order as summarized below;

Item	Amount
Unpaid rent	\$10,923.00
Less: security deposit	(\$800.00)
Total	\$10,123.00

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord is entitled to an order of possession pursuant to s. 55(1) of the *Act*. The tenants shall give vacant possession of the rental unit to the landlord within two (2) days of receiving the order of possession.

The landlord is entitled to an order for unpaid rent pursuant to s. 55(1.1) of the *Act*. I order that the tenants pay the landlord \$10,123.00 in unpaid rent.

It is the landlord's obligation to serve the order of possession and the monetary order 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 07, 2023

Residential Tenancy Branch