



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the Tenants' application under the *Residential Tenancy Act* (the "Act") to dispute a 10 day notice to end tenancy for unpaid rent or utilities dated September 2, 2022 (the "10 Day Notice") pursuant to section 46.

One of the Tenants, DK, and the Landlord attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Correction of Dispute Address and Addition of Tenant

The parties agreed that there was a mistake in the dispute address as stated on the application. I have corrected the address pursuant to section 64(3)(c) of the Act.

This application initially listed DK as the sole tenant. The parties agreed that there is a second tenant, CR. DK testified that CR is his common law spouse and that he is representing her in this proceeding. I have reviewed the parties' tenancy agreement and find that CR signed this agreement as a tenant. I also find CR was named as a tenant on the 10 Day Notice. Accordingly, I have added CR as a tenant and applicant.

Preliminary Matter – Service of Dispute Resolution Documents

The parties did not raise any issues with respect to service of documents. The Landlord acknowledged receipt of the Tenants' notice of dispute resolution proceeding package

and documentary evidence (collectively, the “NDRP Package”). I find the Landlord was served with the NDRP Package in accordance with sections 88 and 89 of the Act.

DK acknowledged receipt of the Landlord’s documentary evidence. Pursuant to section 71(2)(c) of the Act, I find the Tenants were sufficiently served with the Landlord’s documentary evidence for this hearing.

Issues to be Decided

1. Are the Tenants entitled to cancel the 10 Day Notice?
2. Is the Landlord entitled to an Order of Possession?
3. Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

This tenancy commenced on August 1, 2021 for a fixed term ending on July 31, 2022, and continued thereafter on a month-to-month basis. Rent is \$2,000.00 due on the first day of each month. The Tenants paid a security deposit of \$1,000.00 which is held by the Landlord.

A copy of the 10 Day Notice has been submitted into evidence. The 10 Day Notice is signed by the Landlord and has an effective date of September 16, 2022. It states that the Tenants failed to pay rent of \$4,713.50 due on September 1, 2022. DK confirmed that the Tenants received a copy of the 10 Day Notice posted to their door on September 2, 2022.

The Landlord testified that the Tenants started falling behind on rent in December 2021. The Landlord stated that as time went on, the Tenants paid bits and pieces, and never a full month’s rent. The Landlord testified that the Tenants gave assurances that their job situation was improving. The Landlord stated that by August 2022, the Tenants were behind on rent by a couple of months, which led the Landlord to issue the 10 Day Notice in early September 2022. The Landlord testified that as of the date of the hearing, the Tenants owe \$10,000.00 in unpaid rent.

In response, DK agreed with the Landlord’s submissions and evidence. DK confirmed that the Tenants are still residing in the rental unit. DK described difficulties that the Tenants have had with their employment and other personal issues. DK asked for a payment plan to catch up on the overdue rent, which the Landlord refused.

Analysis

1. Are the Tenants entitled to cancel the 10 Day Notice?

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 tenant has a right under the Act to deduct all or a portion of the rent.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 46(2) of the Act requires that a 10 day notice to end tenancy must comply with section 52 of the Act, which states:

Form and content of notice to end tenancy

- 52 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) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.

In this case, I have reviewed the 10 Day Notice and find that it complies with the requirements of section 52 in form and content.

I find the Tenants were served with a copy of the 10 Day Notice in accordance with section 88(g) of the Act on September 2, 2022.

Section 46(4)(b) of the Act permits a tenant to dispute a 10 day notice to end tenancy for non-payment within 5 days of receiving such notice. Therefore, the Tenants had until September 7, 2022 to dispute the 10 Day Notice or pay the outstanding rent in full. Records of the Residential Tenancy Branch indicate that this application was submitted

on September 6, 2022. I find this application was made within the time limit stipulated under section 46(4)(b) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Although the Tenants have disputed the 10 Day Notice, I find it is admitted that the Tenants failed to pay the Landlord \$10,000.00 in rent.

Under section 66(2) of the Act, the director may extend the 5-day time limit established by section 46(4)(a) for a tenant to pay overdue rent only if (a) the extension is agreed to by the landlord, or (b) the tenant deducted the unpaid amount because the tenant believed the deduction was allowed for emergency repairs or under an order of the director.

In this case, the Landlord does not agree to an extension of time for the Tenants to pay the overdue rent. Furthermore, I find there is no evidence before me to suggest that the Tenants withheld rent for emergency repairs or had received a monetary order against the Landlord from the Residential Tenancy Branch. Moreover, I find there is no evidence that the Tenants had any other legal right under the Act to withhold payment of rent to the Landlord. For reference, the legal reasons under the Act for a tenant to deduct from rent include:

- The tenant paid too much for a security or pet damage deposit (section 19(2))
- The tenant paid for emergency repairs (section 33(7))
- The tenant paid an illegal rent increase (section 43(5))
- The tenant applied compensation to the last month's rent where the landlord has issued a notice to end tenancy for landlord's use (section 51(1.1))
- The tenant was awarded monetary compensation or a rent reduction by the Residential Tenancy Branch (section 72(2)(a))

I conclude the Landlord has established the grounds for ending this tenancy as stated in the 10 Day Notice. Accordingly, I dismiss the Tenants' application to cancel the 10 Day Notice without leave to re-apply.

2. Is the Landlord entitled to an Order of Possession?

Section 55(1) of the Act 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.

Having found the 10 Day Notice to comply with the requirements of section 52 and having dismissed the Tenants' claim to dispute the 10 Day Notice, I find the Landlord is entitled to an Order of Possession under section 55(1) of the Act.

Since the effective date of the 10 Day Notice has already passed, I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenants.

3. Is the Landlord entitled to a Monetary Order for unpaid rent?

Pursuant to section 55(1.1) of the Act, the director must grant an order requiring the payment of unpaid rent when the notice to end tenancy complies with section 52 of the Act and the tenant's application to dispute the notice is dismissed.

Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent states:

E. Determining when a tenancy has ended for the purposes of section 55 (1.1) of the RTA (s. 48 (1.1) of the MHPTA)

Under section 55(1.1) of the RTA (section 48(1.1) of the MHPTA), the director must grant a landlord an order requiring the tenant to pay the unpaid rent if the following conditions are met:

- the tenant has disputed a notice to end tenancy issued by the landlord for unpaid rent under section 46 of the RTA (section 39 of the MHPTA);

- the notice to end tenancy complies with section 52 of the RTA (section 45 of the MHPTA); and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

This provision allows a landlord to obtain a monetary order for unpaid rent without having to file their own application. Under the legislation, the requirement to pay rent flows from the tenancy agreement. Unpaid rent is money that is due and owing during the tenancy.

[...]

If a tenant has not vacated or abandoned the unit, or the conclusive presumption does not apply, (in other words the right of possession of the rental unit or manufactured home site is in issue at the dispute resolution hearing), the director will usually rely on section 68(2) of the RTA (section 61(2) of the MHPTA) to order that the date the tenancy ends is the date of the dispute resolution hearing, rather than the effective date shown on the notice to end tenancy.

If the director is satisfied upon reviewing submitted materials and hearing evidence as to an amount of unpaid rent owing, including rent owing since the time the notice to end tenancy was issued, the director must grant an order to the landlord for the amount of unpaid rent found to be owing.

I find the Tenants are still residing in the rental unit. Pursuant to section 68(2) of the Act, I order that this tenancy is ended the date of this hearing, or February 3, 2023. I am satisfied that the amount of unpaid rent owing to the Landlord to this date is \$10,000.00. As full rent for the month of February 2023 was due on February 1, 2023, no amount will be pro-rated for this month.

Pursuant to section 55(1.1) of the Act, I order the Tenants to pay \$10,000.00 to the Landlord for unpaid rent.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the full amount of the Tenants' \$1,000.00 security deposit in partial satisfaction of the amount awarded to the Landlord for unpaid rent.

The Monetary Order granted to the Landlord for the balance is calculated as follows:

Item	Amount
Unpaid Rent (up to February 2023)	\$10,000.00
Less Security Deposit	- \$1,000.00
Total Monetary Order for Landlord	\$9,000.00

Conclusion

The Tenants' application to cancel the 10 Day Notice is dismissed without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **two (2) days** after service upon the Tenants. The Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is authorized to retain the Tenants' \$1,000.00 security deposit in partial satisfaction of the total amount awarded in this decision.

Pursuant to section 55(1.1) of the Act, I grant the Landlord a Monetary Order in the amount of **\$9,000.00** for the balance of unpaid rent awarded. The Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Provincial 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 03, 2023

Residential Tenancy Branch