



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

On October 21, 2022 the Landlord filed an Application at the Residential Tenancy Branch for:

- an Order of Possession in line with the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”);
- compensation for unpaid rent;
- reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant so 74(2) of the *Residential Tenancy Act* (the “Act”) on February 10, 2023. Both the Landlords (hereinafter, the “Landlord”) and the Tenants (hereinafter, the “Tenant”) attended the teleconference hearing.

Preliminary Matter – Landlord’s service of Notice of Dispute Resolution Proceeding and evidence

The Landlord initially applied for an order of possession and compensation for unpaid rent to the Residential Tenancy Branch via the Direct Request proceeding method. This is a non-participatory method available to parties in certain circumstances, such as a 10-Day Notice, where an affected tenant does not apply to dispute it.

The Residential Tenancy Branch processed the Landlord’s direct request Application, and an Adjudicator granted an Order of Possession, and a Monetary Order, on December 19, 2022. After this, the Tenant applied for a Review Consideration of the decision based on a separate application, filed by the Tenant, on October 30, 2022, scheduling a separate hearing. The Arbitrator in the Review Consideration decision found, based on the evidence before them in that reconsideration process, that the Tenant had applied within 5 days of receiving the 10-Day Notice, which the Tenant indicated they received from the Landlord on October 30, 2022. Based on this

information, the Arbitrator granted a new hearing of the original Landlord's Application, and I heard the matter in this scheduled teleconference hearing on February 10, 2023.

To notify the Tenant about this rescheduled hearing, the Landlord served the Notice of Dispute Resolution Proceeding document via process server, who mailed that document through registered mail, on January 3, 2023. That process server attended and spoke to the method of service and their handling of the material using registered mail. One package, to one of the Tenants, was picked up from the post office on January 11, 2023, as indicated by the tracking number.

The Tenant in the hearing stated they received information about the scheduled hearing from the Residential Tenancy Branch a few days before the hearing. The Tenant did state they had the Notice of Dispute Resolution Proceeding document they received from the Landlord via registered mail.

From this information, I find the Landlord completed service of notification of this hearing to the Tenant as required, and this within the timeline provided to them by the Residential Tenancy Branch.

As set out above, the Landlord applied initially in a direct request process. They provided evidence for this matter via registered mail in 2022 when their original Application was processed. The Landlord provided registered mail tracking numbers in the hearing that they used to confirm that the Tenant accepted those original pieces of registered mail. Based on this information, I find the evidence that the Landlord intends to rely on for this hearing was delivered to the Tenant via registered mail on November 14, 2022.

Issues to be Decided

Is the Landlord entitled to an Order of Possession in line with the 10-Day Notice, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to compensation for rent amounts in the rental unit, pursuant to s. 55(4)) and/or s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee for their Application, pursuant to s. 72 of the *Act*?

Background and Evidence

In their evidence, the Landlord provided a copy of the tenancy agreement. The set amount of rent, as set out in the agreement, was \$2,600 per month, payable on the first of each month. The Tenant paid a \$1,500 security deposit at the start of the tenancy. The tenancy started on April 12, 2022.

The Landlord issued the 10-Day Notice on October 5, 2022, for the set end-of-tenancy date of October 16, 2022. This was for the unpaid rent amount of \$2,600 listed as payable on October 1.

The Landlord indicated on the document that they served this to the Tenant by attaching the document to the door of the rental unit. Also in the Landlord's evidence is a "Proof of Service" in which they set out how they served the document directly to the Tenant on October 6, 2022. In the hearing, the Landlord replicated the statement they put in the document:

When [the Tenant] saw the landlords approaching [they] went into the house and refused to answer the door. [The Landlord] knocked on the door and when [the Tenant] didn't answer, [the Landlord] taped the notice to the door. [Another Landlord] witnessed the event. Two days later, [the Tenant] emailed [the Landlord] and complained about how service was made and thereby confirmed that [they] had received the notice.

In the hearing the Tenant stated they received the 10-Day Notice on October 6. In the hearing they stated they made an application to the Residential Tenancy Branch on October 10 ("Tenant Application A") to dispute this end-of-tenancy notice online. The Tenant provided a Residential Tenancy Branch file number, assigned by the Residential Tenancy Branch in response to the Tenant's Application.

As set out above, the Tenant made a separate Application ("Tenant Application B") to the Residential Tenancy Branch on October 30, 2022. On this Tenant Application B, the Tenant provided that they received the 10-Day Notice on October 30, 2022. This is scheduled for a hearing on March 3, 2023. In the hearing the Landlord stated they had no knowledge of this separate application from the Tenant.

In the hearing, the Landlord provided that the Tenant did not pay rent for the month of October 2022. The Tenant did not pay within 5 days of receiving the 10-Day Notice, as provided for on that document.

The Landlord did not receive rent from the Tenant in the subsequent months, through to February 2023.

The Tenant stated they did not pay rent in October 2022 or November 2022. This was because of a repair issue that was not resolved for them in the rental unit. They cited the legal process where they had paid previously for “immediate maintenance”. The Tenant presented that they paid the December 2022 rent in cash, mailed from outside the province on November 30, 2022. Also, the Tenant paid the January 2023 rent via etransfer on January 16, 2023. The Tenant stated they did not pay the February 2023 rent, without being sure of the outcome of this hearing heard on February 10, 2023.

The Landlord disagreed that they received rent in cash from the Tenant as described in the hearing. Additionally, the Landlord provided that their email address at no time changed; therefore, there should be nothing blocking the sending of rent payments in this method. The Landlord reiterated that they did not receive rent for October 2022 through to February 2023.

Analysis

I find the basic amount of rent -- \$2,600 as set out in the tenancy agreement – to be established fact. I also find the Tenant paid a security deposit amount of \$1,500 at the start of the tenancy.

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not a 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. The wording appears thus:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations of the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The *Act* s. 46(1) provides authority for a landlord to issue a notice to end a tenancy if rent is unpaid “on any day after it is due”, with an end-of-tenancy date that is “not earlier than 10 days after the date the tenant receives the notice.”

In this dispute the Landlord issued the 10-Day Notice on October 5, 2022, serving that to the Tenant on October 6, 2022.

The Tenant confirmed they received the document on October 6, 2022. This was in direct response to my question confirming this information. The Tenant's Application A (filed on October 6, 2022) was incomplete at the Residential Tenancy Branch and not processed. I find this was not an application by the Tenant, within 5 days, as required by s. 46(4).

The Tenant filed their Application B on October 30, 2022. The Tenant listed the date of the Landlord's service of the 10-Day Notice on October 30, 2022. In the hearing, the Tenant confirmed they received the 10-Day Notice on October 6, 2022, which contradicts what they indicated in Application B.

Based on the Tenant's confirmation, I find as fact that the Landlord served the 10-Day Notice on October 6, 2022. The Tenant did not complete the Application A on October 6, 2022; moreover, they did not apply to challenge the 10-Day Notice until October 30, 2022 when they filed their Application B. That date is beyond the 5-day limit as set out on the 10-Day Notice document.

The *Act* s. 46(5) sets out that, where a tenancy receives a 10-Day Notice and does not pay the rent or make an application within 5 days, they are "conclusively presumed to have accepted that the tenancy ends on the effective date of the notice". Additionally, they must vacate the rental unit by the date indicated on the 10-Day Notice. Where a tenant does not vacate, they are considered overholding in the rental unit.

Based on the foregoing, I find that the Tenant here is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, October 16, 2022. This is despite the Tenant's Application B of October 30, 2022.

On my review, I find the 10-Day Notice complies with the requirements of form and content; therefore, for this Application by the Landlord, I find they are entitled to an Order of Possession as per s. 55(4)(a).

The *Act* s. 55(4) specifies that I must grant repayment of unpaid rent where a tenant did not make an application for dispute resolution within the specified timeline. As per s. 55(4)(b), I grant an award for compensation to the Landlord in the amount of \$13,000 for the full amount of rent from October 2022 through to February 2023, which is five consecutive months. The Tenant did not end the tenancy in accordance with the requirements of the *Act*; therefore, they are obligated to pay the full month of February 2023 after overholding in the rental unit.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by a landlord. However, s. 19(1) specifies that a landlord must not require or accept a security deposit that is greater than one-half the amount of rent payable under the tenancy agreement. I find as fact that the Landlord retained a deposit amount of \$1,500, which is \$200 more than what they are allowed to retain. As per s. 19(2), I order the Landlord to either deduct the overpayment from rent owing, with the Tenant's consent, or otherwise return the \$200 amount to the Tenant.

The Landlord has established a claim of \$13,000. After setting off the \$1,300 correct security deposit amount, there is a balance of \$11,700. I am authorizing the Landlord to keep the correct security deposit amount, and award the balance of \$11,700 as compensation for the October 2022 rent through to the February 2023 rent amounts.

The Landlord was successful on their Application; therefore, I grant reimbursement of the full Application filing fee to them.

Conclusion

For the reasons outlined above, I grant the Landlord's Application for an Order of Possession, in line with the 10-Day Notice. The Order of Possession is effective **TWO DAYS** after they serve it to the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it may be enforced as an Order of that Court.

I order the Tenant to pay the Landlord the amount of \$11,800, pursuant to s. 55(4) and s. 72 of the *Act*. I grant the Landlord a monetary order for this amount. The Landlord may file this monetary order in the Provincial Court (Small Claims) 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 13, 2023

Residential Tenancy Branch