



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated September 18, 2022 ("10 Day Notice"); and for an Order for the Landlord to Comply with the Act or tenancy agreement.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I considered service of the Notice of Dispute Resolution Hearing and the evidence submitted. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that he served the Landlord with the Notice of Hearing documents and his evidence by Canada Post registered mail, although, he could not produce a tracking number as evidence of service. The Landlord said that he never received any of these documents. He said he found out about this hearing recently, when he applied for an order of possession via a direct order application. He provided the file number for that application. Based on the evidence before me in this matter, I find that the Landlord was not served with the Tenant's Notice of Hearing or evidentiary submissions, and therefore, I advised the Parties that I could not consider the Tenant's evidence in this proceeding.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Early in the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the Tenant indicated different matters of dispute on his Application, the most urgent of which was the claim to set aside the 10 Day Notice. I found that not all the claims on the Application are sufficiently related to be determined during this one-hour proceeding. I advised the Parties that I would, therefore, only consider the Tenant's request to set aside the 10 Day Notice. Therefore, the Tenant's other claim is dismissed, without leave to re-apply.

When a tenant applies to cancel an eviction notice, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. I must grant the landlord an order of possession if – first - I dismiss the tenant's application, and second, if the eviction notice is compliant with the Act, as to form and content.

The onus to prove their case is usually on the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel an eviction notice. As such, the burden of proof is on the Landlord for this proceeding.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order for outstanding rent owed to him, and if so, how much?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on March 1, 2021, and ran to June 30, 2022, and then operated on a month-to-month basis. They agreed that the

Tenant was required to pay the Landlord a monthly rent of \$1,550.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a \$500.00 security deposit and a \$250.00 pet damage deposit. The Landlord confirmed that he still holds the deposits in full.

The Parties agreed that the Landlord served the Tenant with a 10 Day Notice that was signed and dated September 18, 2022, and which has the rental unit address. They agreed that the 10 Day Notice was served in person and by email on September 18, 2022, with an effective vacancy date of September 28, 2022. The 10 Day Notice was served on the grounds that the Tenant failed to pay the Landlord \$3,100.00 when it was due to the Landlord on September 1, 2022.

In the hearing, the Landlord said:

It's gone on since April. 2022 – his being behind in rent. If you miss one month's rent that means you get a 10 day notice. I knew he was going through a tough time – his health, money, he lost his job, and I believed him and trusted him.

In May and June, he evened us up, but in June he hadn't paid, and in July he hadn't paid. There was no [10 day] notice in April, as I gave him time to catch up. But in July, he was two months behind. He diligently and responsibly tried to pay what he could, but he couldn't pay in July. I listened to him, but then in September he owed \$5,200.00; he signed for receiving the [10 Day] Notice. Again, he made some payments in October - \$1400.00 in three payments. I gave him another chance. But it went all the way to December and he hadn't paid. There was one \$700.00 payment. When in January he didn't pay on the first, I gave him another 10 Day Notice. He now owes \$8,300.00, including February [2023].

I asked the Tenant if he did not agree with anything the Landlord said, and the Tenant said it was all true, including the \$8,300.00 owing today.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 of the Act states that 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. Section 46 also states that the 10 day notice must comply with section 52, as to form and content.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice in person on September 18, 2022. I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

Section 26 of the Act states that a tenant must 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. There is no evidence before me that the Tenant has a right under the Act to deduct any rent.

The Parties agreed that the Tenant has had a run of ill health and bad luck; however, these are not grounds under the Act on which I can refrain from awarding the Landlord an order of possession and a monetary order for unpaid rent. Based on the evidence before me over all, I dismiss the **Tenant's Application** to cancel the 10 Day Notice **without leave to reapply**.

In the hearing, the Parties agreed that the Tenant owes the Landlord \$8,300.00 in unpaid rent as of February 1, 2023. I, therefore, **award the Landlord with \$8,300.00** from the Tenant, pursuant to sections 46 and 67 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's **\$500.00** security deposit and **\$250.00** pet damage deposit in partial satisfaction of the Landlord's monetary award. I authorize the Landlord to retain the Tenant's **\$750.00** of deposits, pursuant to section 72. I further grant the Landlord a **Monetary Order of \$7,550.00** for the remaining amount of the monetary award owing, pursuant to section 67 of the Act.

As a result, I find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenant has not paid full rent since June 2022, I award the Landlord with an **Order of Possession, effective two days after service** of the Order on the Tenant.

Conclusion

The Tenant has not paid full rent for more than the last nine months, therefore, his Application is dismissed without leave to reapply.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession effective two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this order as soon as possible. Should the Tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is awarded **\$8,300.00** from the Tenant representing the amount of unpaid rent outstanding. The Landlord is authorized to retain the Tenant's **\$500.00** security deposit and his **\$250.00** pet damage deposit in partial satisfaction of this award.

I grant the Landlord a **Monetary Order** of **\$7,550.00** for the remaining amount owed to the Landlord in unpaid rent. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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