



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FDG PROPERTY MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for February 9, 2023. I had allowed the tenant's adjournment application for medical reasons.

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

BK ("landlord") appeared as agent for the landlord in this hearing. While the landlord attended the hearing by way of conference call, the tenant did not. I waited until 11:10 a.m. to enable the tenant to participate in this scheduled hearing for 11:00 am. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As noted in my Interim Decision, both parties were cautioned to pay attention to the participant code on the Notice of Reconvened Hearing as they may differ from the one provided for the original scheduled hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Reconvened Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording the dispute resolution hearing by participants, and that the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. The landlord confirmed that they understood.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As noted in my Interim Decision dated February 9, 2023, I allowed the tenant to submit written evidence in lieu of their attendance, which must be served on the landlord. I also ordered that the tenant provide medical documentation to support that they sought medical treatment on February 9, 2023. As the tenant did provide the RTB and the landlord with written evidence and the requested medical documentation, the hearing proceeded as scheduled, and the tenant's written evidence will be considered for their application in lieu of their attendance.

The landlord testified that the 10 Day Notice to End Tenancy dated September 19, 2022 was posted on the tenant's door on the same date. I note that this information is also reflected on the tenant's application disputing this 10 Day Notice. In accordance with sections 88 and 90 of the Act, I find the tenant deemed served with the 10 Day Notice on September 21, 2022, 3 days after posting. As the tenant filed this application on September 23, 2022, I find that the tenant filed their application within the required time limit.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

While I have turned my mind to all the documentary evidence before me as well as the sworn testimony provided during the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy began on June 1, 2022, with monthly rent set at \$2,150.00 payable on the first of the month. No security deposit was paid for this tenancy.

The landlord served the tenant with a 10 Day Notice for Unpaid Rent on September 19, 2022 for failing to pay \$8,600.00 in outstanding rent. The landlord testified that the tenant has not paid any rent since the issuance of the 10 Day Notice, and testified that the tenant now owes \$19,350.00 in unpaid rent for this tenancy.

The tenant filed this application disputing the 10 Day Notice, stating the following:

“Landlord has put me in a position of duress in multiple occasions that affected my health and well-being. I have had and still am having worsening multiple medical issues affecting employment that I am trying to resolve.”

The tenant submitted copies of email correspondence between the tenant and landlord, as well as the requested medical documentation as noted earlier in this decision. The tenant notes that they have not been feeling very good, and that they have been making an effort to pay the arrears. With limited funds combined with their medical issues, the tenant has been struggling to find new housing, and pay the outstanding rent.

The tenant notes that they do not have a supportive family, and that they are still awaiting assistance from the government. The tenant confirmed in their email to the landlord that they have found a new place to rent, but cannot move in until February 25, 2023.

The landlord confirmed in the hearing that they are requesting an Order of Possession, and would agree to extend the effective date to February 25, 2023.

Analysis

Section 46(4) of the Act provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within 5 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch, or pay the overdue rent. In this case, the tenant filed their application within the required 5 days. I must now consider whether the 10 Day Notice is valid and whether the landlord is entitled to an Order of Possession.

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (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 or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

In this case, I am satisfied that the tenant has not provided any evidence to show that any of the outstanding rent was paid. I am also satisfied that the tenant did not move out after the effective date of the 10 Day Notice, September 30, 2022, and has not paid any rent since that date.

Although the tenant provided an explanation for why they have not paid any of the rent, I am not satisfied that the tenant had the right under the *Act*, nor did the tenant possess an order from an Arbitrator, allowing the tenant to deduct or withhold any of the rent. I find that the 10 Day Notice complies with section 52 of the *Act*, which requires that the Notice 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) state the grounds for ending the tenancy, and (e) be in the approved form. For these reasons, I find the 10 Day Notice to End Tenancy to be valid, and I dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply.

Section 55(1) and (1.1) of the *Act* reads as follows:

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.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that the landlord is entitled to an Order of Possession. The landlord will be given a formal Order of Possession for **1:00 p.m. on February 25, 2023**, which must be served on the tenant. If the tenant does not vacate the rental unit by 1:00 pm. on February 25, 2023, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1.1) of the *Act*, I find that the landlord is entitled to a monetary order in the amount of \$19,350.00 for the unpaid rent for this tenancy.

Conclusion

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

I grant an Order of Possession to the landlord effective **1:00 p.m. on February 25, 2023**, which must be served on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

I issue a \$19,350.00 Monetary Order in favour of the landlord for the unpaid rent for this tenancy.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 17, 2023

Residential Tenancy Branch