



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, CNC, LRE, OLC, FFT**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act ("the Act") for orders as follows:

- For cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46 of the Act
- Cancellation of a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47 of the Act
- For an order suspending or setting conditions on the landlord's right to enter to the rental property pursuant to section 70 of the Act
- For an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

While the respondent landlord attended the hearing by way of conference call, the applicant tenant did not, although I waited until 1:40pm in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30pm. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rule 7.1 of the Rules of Procedure provides as follows:

7.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Both parties confirmed they were not recording the hearing pursuant to RTB Rules of Procedure 6.11. The parties were affirmed.

The landlord, through the witness MM testified that the 10 Day Notice dated August 31, 2022 with an effective date of September 9, 2022 and the One Month Notice dated August 31, 2022 with an effective date October 31, 2022 were served on the tenant by registered mail on August 31, 2022. They were mailed in one package. The landlord provided a Canada Post registered mail tracking number in evidence dated August 31, 2022. Pursuant to section 88 and 90 of the Act the tenant is deemed to have been served on September 5, 2022 with both of these notices in accordance with the Act.

The landlord further testified through his witness MM that she served the tenant with the landlord's evidence for the application through registered mail on December 14, 2022. Proof of service in the form of a registered mail receipt with a tracking number dated December 14, 2022 was provided in evidence. The tenant is deemed served on December 19, 2022 in accordance with sections 88, 89 and 90 of the Act.

Preliminary Issue

The tenant applied for several other orders in addition to cancellation of the 10 Day Notice and One Month Notice. These issues are not related to the dispute of the 10 Day Notice and One Month Notice and are therefore severed pursuant to Rule 2.3 of the RTB Rules of Procedure. The tenant has leave to reapply on these issues. This decision does not extend any time limits set out in the Act.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Is the One Month Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
3. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced July 2, 2019 on a month to month basis. Rent is \$2,500.00 per month due on the first day of the month. The landlord holds a \$1,250.00 security deposit in trust for the tenant. The tenant still occupies the rental unit.

The landlord testified that he purchased the rental unit and took possession of it on October 21, 2021 and assumed the tenant's lease with the purchase. He stated further that the tenant has not paid rent since that date. He provided a ledger in evidence showing that the tenant has not paid rent from October 1, 2021 to August 1, 2022. He stated further that the tenant has not paid rent for any month after August 1, 2022 including January 2023. The current amount of rent owing is \$40,000.00. The landlord is seeking a monetary order for unpaid rent in the amount of \$40,000.00.

During the hearing the landlord referred to a previous decision by an arbitrator in relation to a previous 10 Day Notice to End Tenancy served on the tenant. The landlord stated that he was unsuccessful in getting an order of possession in the previous hearing because there were issues with service of documents.

Analysis

Section 55(1) of the Acts notes that the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 and the director dismisses the tenant's application.

The tenant failed to attend their own hearing and present evidence or submissions in support of their application. Rule of Procedure 7.3 notes, an arbitrator may conduct the dispute resolution hearing in the absence of the party, or dismiss the application.

The undisputed evidence of the landlord is that the tenant failed to pay rent in June, July and August, 2022. The landlord provided a ledger in evidence showing the tenant's failure to pay rent for those months. I therefore dismiss the tenant's dispute application of the 10 Day Notice.

The 10 Day Notice dated August 31, 2022 meets the form and content requirements of section 52 of the Act. Section 55 of the Act requires me to issue an order of possession in favour of the landlord if the 10 Day Notice meets the form and content requirements of section 52 of the Act and if I dismiss the tenant's application. As section 55(1) of the Act is satisfied, the landlord is entitled to an order of possession effective two days from the date it is served on the tenant.

Section 55(1.1) of the Act requires me to issue a monetary order for unpaid rent if:

1. The landlord's notice is in relation to section 46;
2. The 10 Day Notice complies with section 52 of the Act; and
3. I have dismissed the tenant's dispute application.

All three requirements have been satisfied. I find based on the landlord's undisputed evidence that the tenant did not pay rent of \$2,500.00 per month for the months of June, July, and August, 2022. The landlord is therefore entitled to a monetary order for unpaid rent for those months. The landlord is allowed to retain the \$1,250.00 security deposit in partial satisfaction of the unpaid rent.

I reviewed the previous decision referred to by the landlord in his submissions. The arbitrator in the previous hearing was not satisfied that the tenant failed to pay rent on April 1, 2022 in relation to the 10 Day Notice to End Tenancy and was further not satisfied based on the evidence in her hearing that the tenant was repeatedly late in paying rent from October 2021 to May 2022. Any issues of late payment or non payment of rent up to May 31, 2022 have been decided by the previous arbitrator and I will only consider the non payment and late payment of rent after those dates.

The tenant's dispute application is dismissed and therefore he is not entitled to recover the filing fee for this application. As I have found that the 10 Day Notice is valid and enforceable, I do not find it necessary to consider the One Month Notice.

Conclusion

The landlord is granted an order of possession which will be effective two days after it is served on the tenant. The order of possession must be served on the tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The landlord is granted a monetary order for \$6,250.00 as follows:

Claim	Amount
Unpaid rent	\$7,500.00
Security deposit	(\$1,250.00)
Total	\$6,250.00

The monetary order must be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 8, 2023

Residential Tenancy Branch