



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OLC

Introduction

The Tenant seeks an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”). The Tenant also submitted a request for the Landlord to comply with the Act, regulation, or the tenancy agreement with their application, though during the hearing this was confirmed by the Tenant to have been added in error, therefore I shall not be considering this request.

Parties appeared for both the Landlord and the Tenant. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Tenant confirmed they served the Notice of Dispute Resolution Package (the “materials”) on the Landlord in person at their place of business on December 22, 2022. The Landlord confirmed receipt of the materials and raised no issues with their service. Therefore, I find that pursuant to section 89 of the Act that the Tenant’s application materials were sufficiently served to the Landlord.

The Landlord confirmed they served their evidence to the Tenant on January 25, 2023 via registered mail. The Tenant confirmed receipt and raised no issues with service. Therefore, I admitted the Landlord’s evidence to proceedings.

Issues to be Decided

- 1) Should the Notice be cancelled?
- 2) If not, is the Landlord entitled to an order of possession?
- 3) Is the Landlord entitled to an order for unpaid rent?

Background and Evidence

Both parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties agreed that the tenancy commenced August 1, 2021 for a fixed term of one year which then converted to a month-to-month periodic tenancy. Rent is \$1,775.00 payable on the first day of the month. A security deposit of \$875.00 is held by the Landlord in trust for the Tenant. No pet damage deposit is held.

The Landlord testified that rent due on December 1, 2022 went unpaid and the Notice was served on December 9, 2022. They were not certain of the method of service, though believe the Notice was served either in person or by attaching to the door of the rental unit. They testified that no payments for rent, or any payments for other fees and charges owed by the Tenant have been received since serving the Notice.

The Tenant confirmed receipt of the Notice on December 9, 2022 and stated they needed more time to initiate their dispute, which was submitted to the Residential Tenancy Branch on December 15, 2022, citing medical reasons and financial issues.

The Tenant acknowledged they had not paid rent due on December 1, 2022 and had withheld rent for January and February 2023 to cover potential costs of relocating. They provided testimony regarding health and personal issues affecting them in the previous months which led to a reduction in income. They stated that their overall circumstances had improved within the last 30 days and they would be willing to pay the rental arrears as well as rent for March 2023 in advance.

Analysis

Section 46(4) of the Act provides that within five days of receiving a notice for unpaid rent, the tenant must either pay the overdue rent or dispute the notice by submitting an application for dispute resolution to the Residential Tenancy Branch. Section 46(5) of the Act states that if a tenant takes neither of the previously mentioned actions, they are conclusively presumed to have accepted the notice and the tenancy would end on the effective date of the notice.

The Tenant disputed the Notice six days after receipt which is one day outside of the permitted timeframe, though they cited extenuating circumstances and requested more time to file their application. I find the circumstances adequately account for the requirement of extra time to file the application and I grant the Tenant's request.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent.

The Act sets out limited circumstances in which monies claimed by the tenant can be deducted from rent, which include when a tenant has paid a security or pet deposit above the allowed amount, reimbursement of costs incurred by the tenant for emergency repairs, when a landlord collects rent for a rent increase that does not comply with the Regulation, if the landlord gives authorization to withhold rent, or as ordered by the Director.

The Tenant put forward no evidence to indicate that any of the above circumstances are applicable, nor are any apparent to me. Therefore I am satisfied that rent in the amount of \$1,775.00 was due on December 1, 2022.

The Tenant provided evidence and testimony regarding recent events in their personal life which gave an explanation as to why rent had not been paid. Whilst I have sympathy for the Tenant and their situation, the Act does not allow me to consider these as valid reasons for non-payment of rent.

Testimony from both parties confirmed that the Tenant did not pay the rent on December 1, 2022. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52 of the Act. As a result, the Tenant's application to cancel the Notice is dismissed without leave to reapply.

Based on the above findings, the Landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the Tenant. The Tenant has two days to vacate the rental unit from the date of service or deemed service. I find that the tenancy ended on February 17, 2023.

Since the application relates to a section 46 notice to end tenancy, the Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenant is ordered to pay \$5,325.00 in unpaid rent to the Landlord.

Under section 38(4)(b) of the Act, the Landlord is ordered to retain the security deposit in partial satisfaction of the payment order. A monetary order for the remaining amount is attached to this Decision and must be served on the Tenant. The monetary order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The order is summarized below.

Item	Amount
Unpaid rent	\$5,325.00
Less: security deposit	(\$875.00)
Total	\$4,450.00

Conclusion

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

The Landlord is entitled to an order of possession pursuant to section 55(1) of the Act. The Tenant shall give vacant possession of the rental unit to the Landlord within two (2) days of receiving the order of possession.

The Landlord is entitled to an order for unpaid rent pursuant to section 55(1.1) of the Act. I order that the Tenant pay the Landlord \$4,450 in unpaid rent.

It is the Landlord's obligation to serve the order of possession and the monetary order on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that court. If the Tenant does not comply with the order of possession, it may be filed by the Landlord with the Supreme 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 17, 2023