



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 634 E Georgia Street Holdings
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant: CNR
 Landlords: OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with the Tenant's application under section 46 of the *Residential Tenancy Act* (the "Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated November 3, 2022 (the "10 Day Notice").

This hearing also dealt with the Landlord's cross-application under the Act for:

- an Order of Possession under the 10 Day Notice pursuant to section 55;
- a Monetary Order of \$2,705.00 for unpaid rent pursuant to section 55; and
- authorization to recover the Landlord's filing fee from the Tenant pursuant to section 72.

The Tenant and the Landlord's agent GS attended this hearing. They were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The parties were informed that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

GS confirmed the Landlord's receipt of the Tenant's notice of dispute resolution proceeding package (the "Tenant's NDRP Package") and documentary evidence via email. GS noted the Landlord did not agree to accept service via email but acknowledged that the documents were received. I find the Landlord was sufficiently served with the Tenant's NDRP Package and documentary evidence pursuant to section 71(2)(c) of the Act.

The Tenant confirmed receipt of the Landlord's notice of dispute resolution proceeding package (the "Landlord's NDRP Package") and documentary evidence via registered mail. I find the Tenant was served with the Landlord's NDRP Package and documentary evidence in accordance with sections 88 and 89 of the Act.

Issues to be Decided

1. Is the Tenant entitled to cancel the 10 Day Notice?
2. Is the Landlord entitled to an Order of Possession?
3. Is the Landlord entitled to compensation for unpaid rent?
4. Is the Landlord entitled to reimbursement of the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the parties' applications and my findings are set out below.

This tenancy commenced on April 15, 2016 with a previous landlord and continued month-to-month. Rent is \$896.00 due on the first day of each month. The Tenant paid a security deposit of \$400.00. There is no written tenancy agreement.

Copies of the 10 Day Notice have been submitted into evidence. The 10 Day Notice has an effective date of November 16, 2022 and states that the Tenant failed to pay rent of \$896.00 due on November 1, 2022.

GS confirmed that a copy of the 10 Day Notice was posted to the Tenant's door on November 3, 2022. The Tenant agreed that the 10 Day Notice was posted to his door but did not recall the date that he received the notice.

GS confirmed the Tenant is still residing in the rental unit and has not paid any rent since November 2022.

The Tenant agreed that he did not pay rent for five months. The Tenant explained that issues relating to his social services payments and employment insurance benefits led to him falling behind with rent payments.

Analysis

1. Is the Tenant entitled to cancel the 10 Day Notice?

Section 26(1) of the Act states that a tenant must pay rent when it is due, 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.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 46(2) of the Act requires that a 10 day notice to end tenancy must comply with section 52 of the Act, which states:

Form and content of notice to end tenancy

- 52 In order to be effective, a notice to end a tenancy 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) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
 - (e) when given by a landlord, be in the approved form.

I have reviewed the 10 Day Notice and find that it complies with the requirements of section 52 in form and content.

I find that a copy of the 10 Day Notice was attached to the Tenant's door on November 3, 2022. I find there is insufficient evidence to confirm which date the Tenant had received the 10 Day Notice. As such, I find that pursuant to section 90(c) of the Act, the Tenant is deemed to have received the 10 Day Notice on November 6, 2022, or three days after attaching to the door.

Section 46(4)(b) of the Act permits a tenant to dispute a 10 day notice to end tenancy for non-payment within 5 days of receiving such notice. Therefore, the Tenant had until

November 11, 2022 to dispute the 10 Day Notice or pay the outstanding rent in full. Records of the RTB indicate the Tenant's application was submitted November 11, 2022. I find the Tenant's application was made within the time limit stipulated under section 46(4)(b) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

In this case, I find it is undisputed that the Tenant did not pay any rent since November 2022. I find the Tenant does not allege that he had any right under the Act to withhold payment of rent to the Landlord.

I conclude the Landlord has established the grounds for ending this tenancy as stated in the 10 Day Notice. Accordingly, I dismiss the Tenant's claim to cancel the 10 Day Notice without leave to re-apply.

2. Is the Landlord entitled to an Order of Possession?

Section 55(1) of the Act states:

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.

Having found the 10 Day Notice to comply with the requirements of section 52 and having dismissed the Tenant's application, I find the Landlord is entitled to an Order of Possession under section 55(1) of the Act.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

3. Is the Landlord entitled to compensation for unpaid rent?

Pursuant to section 55(1.1) of the Act, the director must grant an order requiring the payment of unpaid rent when the notice to end tenancy complies with section 52 of the Act and the tenant's application to dispute the notice is dismissed.

According to Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent ("Policy Guideline 3"), section 55(1.1) of the Act allows a landlord to obtain a monetary order for unpaid rent without having to file their own application. Policy Guideline 3 further states that if the director is satisfied upon reviewing submitted materials and hearing evidence as to an amount of unpaid rent owing, including rent owing since the time the notice to end tenancy was issued, the director must grant an order to the landlord for the amount of unpaid rent found to be owing.

I am satisfied that as of the date of the hearing, the Tenant owes unpaid rent of \$4,480.00 ($\896.00×5 months) to the Landlord for the period from November 2022 to March 2023.

Pursuant to section 55(1.1) of the Act, I order the Tenant to pay the Landlord the sum of \$4,480.00.

4. Is the Landlord entitled to reimbursement of the filing fee?

The Landlord has been successful in proving that the 10 Day Notice should be upheld. As the Landlord's application sought relief similar to those that have been granted to the Landlord on the basis of the Tenant's application, I allow the Landlord's claim for reimbursement of its filing fee from the Tenant under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenant's \$400.00 security deposit in partial satisfaction of the total awarded to the Landlord in this decision.

The Monetary Order granted to the Landlord for the balance is calculated as follows:

Item	Amount
Unpaid Rent from November 2022 to March 2023 (\$896.00 \times 5 months)	\$4,480.00

Filing Fee	\$100.00
Less Security Deposit	- \$400.00
Total Monetary Order for Landlord	\$4,180.00

Conclusion

The Landlord is successful in proving the grounds for ending the tenancy under the 10 Day Notice and establishing that the Tenant owes \$4,480.00 in unpaid rent. The Landlord's claim to recover the filing fee is granted.

The Tenant's application is dismissed without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **two (2) days** after service upon the Tenant. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is authorized to retain the Tenant's **\$400.00** security deposit in partial satisfaction of the total amount awarded to the Landlord in this decision.

Pursuant to sections 55(1.1) and 72(1) of the Act, I grant the Landlord a Monetary Order in the amount of **\$4,180.00** for the balance. 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 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: March 27, 2023

Residential Tenancy Branch