



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding REMAX RENTAL PROS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

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 attended the hearing with an Advocate, K.S. present. A.B., Agent, attended for the Landlord. 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 testified they served the Notice of Dispute Resolution Package (the "Materials") on the Landlord on March 9, 2023 in person. The Landlord confirmed receipt of the Materials. Therefore, I find that that Tenant's Materials were sufficiently served to the Landlord.

A.B. confirmed the Landlord's evidence was served to the Tenant via registered mail on March 10, 2023. The Tenant confirmed receipt of the Landlord's evidence. Therefore, I find that the Landlord's evidence was sufficiently served to the Tenant.

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 a Monetary Order for unpaid rent?

Background and Evidence

The 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.

Both parties agreed that the tenancy started on August 1, 2018 and that rent is \$1,166.00 per month due on the first day of the month. A security deposit of \$547.50 was paid by the Tenant which the Landlord still holds. The Tenant currently occupies the rental unit.

A copy of the tenancy agreement ("Tenancy Agreement") was entered into evidence by both parties. It was noted that the name of the Landlord on the Tenancy Agreement and the Notice differs to that on the Application. A.B. confirmed that the Landlord had recently changed names and that there was no requirement to change the name on the Application.

A.B. testified that the Tenant had been behind on rent for "a few months" and a 10 Day Notice to End Tenancy for Unpaid Rent had been issued. The Tenant had approached the Landlord to discuss a payment plan and one had been agreed upon. I was referred to a copy of the payment plan which had been entered into evidence by the Landlord.

The payment plan is dated February 23, 2023 and provides for additional payments to cover rent arrears, in addition to the rent due on the first day of the month, per the Tenancy Agreement.

A.B. testified that the first payment due under the payment plan was made by the Ministry of Social Development and Poverty Reduction on February 28, 2023. Since then, the payment for rent due on March 1, 2023 and the additional payment under the payment plan also due on March 1, 2023 were not made by the Tenant.

A.B. confirmed the Notice was served to the Tenant on March 3, 2023 by attaching to the door of the rental unit. A copy of the Notice has been entered into evidence by both parties. The Notice is dated March 3, 2023 and provides an effective date of March 16, 2023.

A.B. testified that no payments have been made by the Tenant since serving the Notice and the amount of outstanding rent, as of March 1, 2023 is \$2,526.90. This amount is

made up of rent arrears dating back to January 2023 and rent payments due on February 1, 2023 and March 1, 2023.

The Tenant testified that they could not meet the payment plan as they had health issues and had to leave work so did not have the funds ready previously. They stated they had a new full-time job and so would have funds going forward.

The Tenant confirmed that no rent payments had been made since that on February 28, 2023.

A.B. voiced sympathy towards the Tenant's situation during the hearing but stated that the Tenant had the full-time job when the payment plan was agreed and as no payments had been made since February 28, 2023, an Order of Possession and Monetary Order were sought by the Landlord.

Analysis

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 *Residential Tenancy Regulation*;
- if the landlord gives authorization to not pay 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 \$2,526.90 was due on March 1, 2023.

The Tenant confirmed that rent was not paid due to health issues which meant they were unable to work. 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.

Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

Both the Landlord's evidence and the Tenant's own testimony show that the Tenant did not pay the rent due on March 1, 2023. 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. It is the Landlord's obligation to serve the Order of Possession on the Tenant. 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.

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 March 16, 2023 in accordance with the Notice.

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 \$2,526.90 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. It is the Landlord's obligation to serve the Monetary Order 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	\$2,526.90
Less: security deposit	(\$547.50)
Total	\$1,979.40

Conclusion

The Application is dismissed without leave to reapply.

The Landlord is issued an **Order of Possession**.

The Landlord is issued a **Monetary Order**.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 31, 2023

Residential Tenancy Branch