



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR

Introduction

The Tenant seeks an order pursuant to s. 46 of the *Residential Tenancy Act* (the “Act”) cancelling a 10-Day Notice to End Tenancy signed on October 25, 2023 (the “10-Day Notice”).

S.S. and L.A. appeared as agents for the Landlord. The Tenant did not attend the hearing, nor did someone attend on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend the hearing for their own application, it was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure. The hearing concluded at 11:10 AM without participation of the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agents advise that they were not served with the Tenant’s application, though received notice of the hearing by way of automated email from the Residential Tenancy Branch. The Landlord’s agent confirmed that despite not having been served with the Tenant’s application, they were prepared to proceed with the hearing.

Accordingly, I proceed with the hearing despite the Landlord not having been properly served as whatever prejudice that may result from the lack of service of the Notice of Dispute Resolution rests primarily with the respondent Landlord.

The Landlord’s agent advise the Landlord did not serve evidence on the Tenant in response to the application as they had not received notice of the hearing except from the Residential Tenancy Branch.

Issues to be Decided

- 1) Is the 10-Day Notice enforceable?
- 2) If so, is the Landlord entitled to an order of possession and an 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.

The Landlord's agents confirm the following details with respect to the tenancy:

- The Tenant moved into the rental unit on September 1, 2018.
- Rent is due on the first of each month. Prior to January 1, 2023, monthly rent was due in the amount of \$1,260.63. Since January 1, 2023, monthly rent has been due in the amount of \$1,285.84.
- The Tenant paid a security deposit of \$600.00 to the Landlord.

I am provided with a copy of the 10-Day Notice by the Tenant. The Landlord's agents advise that the 10-Day Notice was served on the Tenant by having it posted to their door on October 25, 2022.

The Landlord's agents further advise that the Tenant made partial payment of October's rent on October 2, 2022 such that arrears of \$630.33 was due when the 10-Day Notice was served. I am further advised by the Landlord's agents that the Tenant paid the overdue rent for October 2022 on November 10, 2022 and that rent for November 2022, December 2022, January 2023, February 2023, and March 2023 has been paid in full.

The Landlord's agents confirm there are no arrears in rent as at the date of the hearing, though they advise the Landlord still seeks an order of possession. I am told the Tenant continues to reside within the rental unit.

Analysis

The Tenant seeks an order cancelling the 10-Day Notice.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant. Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from receiving a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. If a tenant files to dispute the notice, the burden of proving it was issued in compliance with s. 46 of the *Act* rests with the respondent landlord.

In this instance, I accept that the 10-Day Notice was posted to the Tenant's door on October 25, 2022. I find that this was done in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the 10-Day Notice on October 28, 2022.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

I accept the undisputed affirmed testimony of the Landlord's agents that the Tenant made partial payment of October's rent on October 2, 2022, which resulted in the 10-Day Notice being service. I further accept that Tenant paid the overdue rent on November 10, 2022, which is beyond the 5 days permitted to them under s. 46(4) of the *Act*. Further, in the absence of submissions to the contrary, I accept that the Tenant was not entitled to withhold rent from the Landlord under the *Act*.

I find that the Landlord properly issued the 10-Day Notice. The Tenant's application to cancel the 10-Day Notice is hereby dismissed without leave to reapply.

I have considered the submissions with respect to the payment of the arrears on November 10, 2022. Though I accept this submission, the *Act* is clear that any overdue rent is to be paid within 5 days of receiving the notice to end tenancy. There is not room for additional time and to interpret the *Act* otherwise would render s. 46(4) essentially meaningless. The Tenant has an obligation to pay rent when it is due as per the tenancy agreement and s. 26 of the *Act*. The Tenant breached that obligation, a notice to end tenancy was served, and the Tenant failed to pay overdue rent within the time permitted to him. The notice is valid and enforceable.

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As that is the case here, I grant the Landlord its order of possession.

Pursuant to s. 55(1.1) of the *Act*, if a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then the Director must grant an order for unpaid rent. As there is no unpaid rent, I do grant no order under s. 55(1.1) of the *Act*.

Conclusion

The Landlord has established that the 10-Day Notice is enforceable. The Tenant's application to cancel the 10-Day Notice is dismissed without leave to reapply.

The Landlord is entitled to an order of possession pursuant to s. 55(1) of the *Act*. I hereby order the Tenant provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

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.

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 06, 2023

Residential Tenancy Branch