



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: CNR
Landlord: OPR-DR, MNRL, MNR-DR

Introduction

On October 25, 2022 the Tenant applied for dispute resolution for an order cancelling the 10-Day Notice to End Tenancy Issued for Unpaid Rent or Utilities (the “10-Day Notice”) issued by the Landlord on October 24, 2022.

On November 4, 2022 the Landlord applied for an order of possession of the rental unit, and a monetary order for rent not paid. The Landlord’s application here was filed initially as a Direct Request. The matter proceeded by way of participatory hearing because this Direct Request application cannot be considered by that method when there was an application by the Tenant previously in place.

The Landlord amended their Application on February 3, 2023 to update the amount they were seeking in unpaid rent amounts.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 3, 2023. The Landlord attended the telephone conference call hearing; the Tenant did not attend.

Preliminary Matter – Tenant’s attendance

The Tenant’s Application of October 25, 2022 was the first filed in the matter of this tenancy. The Tenant did not attend the hearing, although I left the teleconference hearing open until 1:52pm to enable them to call in to this teleconference hearing

scheduled for 1:30pm. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Hearing generated when the Tenant applied. I also confirmed throughout the duration of the call that the Tenant was not in attendance.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the Tenant's application for cancellation of the October 24, 2022 10-Day Notice. This is without leave to reapply on this issue.

Preliminary Matter – Landlord's service of Notice of Dispute Resolution Proceeding

The Landlord presented that they served the Notice of Dispute Resolution Proceeding to the Tenant via registered mail. In the hearing, the stated the date was November 18, 2022. They provided a registered mail tracking number in the hearing; however, the tracked date that item was sent (in October 2022) precedes the date of their Direct Request Application (on November 4, 2022).

The *Act* s 59 contains the provisions for starting proceedings in a dispute resolution. Subsection (3) states that a person must provide a copy of their application – i.e., the Notice of Dispute Resolution Proceeding – to the other party within 3 days of making it, or within a different period specified by the director. Further, s. 89 provides methods of service and the *Residential Tenancy Branch Rules of Procedure* specify the documents to be served by an applicant (here, the Landlord) to a respondent (here, the Tenant).

On November 17, the Residential Tenancy Branch informed the Landlord that they must serve the Notice of Dispute Resolution Proceeding to the Tenant by November 20, 2022. Though the Landlord referred to the date of November 18 in the hearing, I am not satisfied of service to the Tenant as required, including the Landlord's evidence.

I dismiss the Landlord's Application for this reason; however, the Landlord has leave to reapply.

Background and Evidence

The Landlord advised they issued and served the 10-Day Notice to the Tenant on October 24, 2022. This was for continued unpaid rent and set the final move-out date as November 4, 2022. The Landlord provided a record of their service of this 10-Day Notice to the Tenant with registered mail. The Landlord advised the Tenant was still overholding in the rental unit as of the date of the hearing.

A copy of the 10-Day Notice appears in the Tenant's evidence they provided to the Landlord, and the Residential Tenancy Branch, for this hearing. This shows the final end-of-tenancy date for November 4, 2022. On page 2 of the document, the Landlord provided the amount of \$11,550 as owed by the Tenant on October 1, 2022. This was an accumulation of unpaid rent over consecutive months prior to October 2022.

In the hearing, the Landlord noted they served a second, separate 10-Day Notice to the Tenant on February 2, 2022. Rent to this date was "not paid at all" as they stated in the hearing. There was no copy of this second 10-Day Notice to the Tenant in the Landlord's evidence for this hearing.

Analysis

From the copy of the tenancy agreement in the Tenant's evidence, and the Landlord's testimony confirming the details, I conclude the amount of \$3,000 was payable by the Tenant as rent each month, on the first day of each month.

I accept the Landlord's testimony that the Tenant failed to pay the rent owed in full by October 29, within the five days granted under s. 46(4) of the *Act*. Through the Tenant did dispute this 10-Day Notice within that five-day period, I dismiss the Tenant's Application because they did not attend the hearing, and the Landlord's testimony goes unchallenged.

On my review of the document, the 10-Day Notice contains the necessary elements for it to be effective; therefore, it complies with the requirements of form and content set out in s. 52 of the *Act*. By this provision, I find the Landlord is entitled to an Order of Possession.

I accept the Tenant failed to pay rent as required, and I grant an Order of Possession to the Landlord for that reason. The Landlord is legally entitled to this Order of Possession as per s. 55(4) of the *Act*.

The *Act* allows for a landlord to recover rent in the situation where a tenant's application to cancel a 10-Day Notice is dismissed; however, as set out above, the Landlord's evidence was excluded from my consideration in this hearing. The Landlord has leave to apply for rent amounts owing because there is no accurate record that I may consider without assurance that record was provided to the Tenant for this hearing.

Conclusion

In the absence of the Tenant, I dismiss their application in its entirety and without leave to re-apply.

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it will be 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 s. 9.1(1) of the *Act*.

Dated: March 3, 2023

Residential Tenancy Branch