



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”)

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy signed on March 2, 2023 (the “10-Day Notice”); and
- return of the filing fee pursuant to s. 72.

R.H. appeared as the Tenant. K.R. and M.R. appeared as the Landlords.

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 parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Is the 10-Day Notice enforceable?
- 2) If so, are the Landlords entitled to an order of possession and an order for unpaid rent?
- 3) Is the Tenant entitled to her filing fee?

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 parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on September 29, 2022.
- Rent of \$1,500.00 is due every month.
- The Tenant paid a security deposit of \$750.00 and a pet damage deposit of \$750.00 to the Landlords.

I am advised by the parties that the Tenant moved from Ontario prior to occupying the rental unit. The Landlord M.R. testifies that a remote video viewing of the rental unit was conducted by the parties on August 30, 2022. I am further told by the Landlord M.R. that the rental unit was advertised for occupancy on September 1, 2022.

The parties provide me with a copy of the tenancy agreement. It is signed by the Landlords on August 31, 2022 and by the Tenant on September 2, 2022. The tenancy agreement lists that term for the tenancy began on September 1, 2022 lasting for one year. The tenancy agreement further states that rent was due on the first of each month. The parties advise that the due date for rent was altered at the outset of the tenancy such that half of the rent was due on the 1st with the other half was due on the 15th of each month.

The Landlords advise that the 10-Day Notice was served by leaving a copy in the Tenant's mailbox on March 2, 2023. The Tenant acknowledges receiving the 10-Day Notice on March 2, 2023. I am provided with a copy of the 10-Day Notice by the Tenant, which claims unpaid rent of \$1,500.00 as of March 1, 2023. The Landlords say that the 10-Day Notice issued on the basis that two half month rent payments were not made, the first being on October 15, 2022 and the second on March 1, 2023. I am told by the Landlords that rent for March 1, 2023 was paid by the Tenant such that total arrears as at the hearing was \$750.00. I am directed to banking information in the Landlords' evidence.

I am provided with a series of three emails by the Landlords pertaining to the partial rent for September 2022, all of which were sent at various times on August 31, 2022. The first email is sent by the Landlord K.R. to the Tenant stating the following:

Hi [Tenant],

Please find the attached tenancy agreement for you to review and sign. If you have any questions or concerns, please don't hesitate to ask.

We have dated the agreement for September 1 but are happy to pro-rata it for you if you can arrive by September 15.

[...]

Please let us know when your moving plans are confirmed and when we can expect you to arrive. We are happy to help you settle in as best we can.

Take care and safe travels,

[Landlords]

The Tenant responded to the email above as follows:

Hello,

I want to thank you again for the rental. I was wondering if it would be okay to move in on the last week of September?

K.R. responded to the Tenant stating the following:

Hi [Tenant]

Yes, that would be fine.

We would just need 50% of the normal rental amount by the 1st of September, and you would be free to move in any time after the 15th of September.

If this works for you and you would like to proceed, please return the signed rental agreement and make an eTransfer to this email address for the amount of \$2250.

Security Deposit: $\$1500 * 50\% = \750

Pet Deposit: $\$1500 * 50\% = \750

Half months rent: $\$1500 * 50\% = \750

Total = $\$750 * 3 = \2250

Thanks so much and look forward to hearing from you.

Kind regards,
[Landlords]

The Landlord M.R. testifies that the Tenant paid the security deposit, pet damage deposit, and half a month's rent, totalling \$2,250.00, on September 2, 2022.

The Tenant argued that she agreed to move into the rental unit on the understanding the rent for September 2022 would be prorated for when she moved in such that she was not to be responsible for rent until she occupied the rental unit. I am further told that it was her understanding that the half month's rent she paid on September 2, 2022 was to secure the rental and was not necessarily for the half month of September 2022. It was argued by the Tenant that asking for the first month's rent is common practice in Ontario.

The Landlords' evidence includes further correspondence sent by the Landlords to the Tenant. The Landlord M.R. sent the following message to the Tenant on September 29th:

The rent is \$1500 per month.

The \$2250 you paid us mid-September was for the following:

1) Half a month's rent (for accommodation September 15-30)

plus

2) Half a month's rent (for damage deposit)

plus

3) Half a month's rent (for pet deposit)

[...]

The Landlords resent the same message to the Tenant on October 1, 2022, which resulted in the following response from the Tenant:

Oh okay. I thought we were going to pro rate it from the week I moved in. I can send \$750 now and \$750 on the 15th. Thanks. [...]

On October 17, 2022, the Landlord K.R. followed up on rent not being paid on October 15th, to which the Tenant responded as follows:

I haven't gotten paid from work yet. My mother has been paying for all my expenses so far. I get paid on Friday, however since I owe another \$750 on the first of November I need to pay the \$750 you want in installments. I'm behind financially because I honestly wasn't expecting to pay \$750 for accommodations when I was still in Ontario. I honestly don't understand why I'm getting charged when I wasn't even here. I thought you were going to pro rate the time I was living here in September. [...]

The Tenant later responded on October 17, 2022 that she could pay the remaining October rent in installments. The Tenant further acknowledged through message on February 27, 2023, that she would pay the "outstanding balance" to the Landlords. The Landlords emphasize the \$750.00 due on October 15, 2022 has not yet been paid.

The parties confirm the Tenant continues to reside within the rental unit.

Analysis

The Tenant seeks to cancel 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.

I accept the Landlords evidence that the 10-Day Notice was left in the Tenant's mailbox on March 2, 2023, which the Tenant acknowledges receiving the same day. I find that the Tenant was served in accordance with s. 88 of the *Act*.

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).

In this instance, there is little dispute that the Tenant did not pay \$750.00 on October 15th. The Tenant characterizes her payment on September 2, 2022 as security on the rental to be applied to her first month's rent and that rent for September, if she moved in earlier, was to be pro-rated. However, this argument fails to consider the wording of the tenancy agreement and the context in which she made payment on September 2, 2022.

The email correspondence of August 31, 2022 demonstrates that the Landlords were seeking a start date to the tenancy of September 1, 2022, though were happy to pro-rate September's rent to the 15th. The Landlords further explained the cost breakdown in what they were seeking from the Tenant, being \$2,250.00 for the deposits and a half month's rent. In response to this correspondence of August 31, 2022, the Tenant signed the tenancy agreement and paid \$2,250.00 on September 2, 2022.

The Tenant argues, essentially, that it is unfair for her to be responsible for rent when she is not occupying the rental unit. However, s. 16 of the *Act* specifies that the rights and obligation of the parties to a tenancy agreement begins from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

The tenancy agreement is unambiguous. The tenancy started on September 1, 2022. The Tenant signed the tenancy agreement within the context of the email exchange of August 31, 2022, which clarified occupancy would be permitted anytime after September 15, 2022 provided that Tenant pay half a month's rent. The Tenant paid half a month's rent on September 2, 2022. The Tenant then failed to pay rent on October 15th, acknowledged doing so, and further acknowledged she would later make payment. She has not done so. The Tenant agreed to the tenancy agreement. She cannot resile herself from it afterwards.

I find that the Landlords have demonstrated that the 10-Day Notice was properly issued. The Tenant's application to cancel the 10-Day Notice is dismissed without leave to reapply.

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 Landlords an order of possession. The Tenant shall provide vacant possession of the rental unit within two days of receiving the 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 I must grant an order for unpaid rent. I find that unpaid rent totals \$750.00. Accordingly, the Landlords are entitled to an order for unpaid rent totalling \$750.00.

Conclusion

I dismiss the Tenant's application to cancel the 10-Day Notice without leave to reapply.

Pursuant to s. 55(1) of the *Act*, I grant the Landlords an order of possession. The Tenant shall provided vacant possession of the rental unit to the Landlords within **two (2) days** of receiving the order of possession.

Pursuant to s. 55(1.1) of the *Act*, I order that the Tenant pay \$750.00 to the Landlords in unpaid rent. I exercise my discretion pursuant to s. 72(2) of the *Act* and order that the Landlords retain the \$750.00 pet damage deposit in full satisfaction of their unpaid rent claim.

I find the Tenant was unsuccessful in her application. Her claim under s. 72(1) of the *Act* for the return of her filing fee is dismissed without leave to reapply.

It is the Landlords' 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 Landlords 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 29, 2023

Residential Tenancy Branch