



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, LRE

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 February 2, 2023; and
- an order pursuant to s. 70 restricting the Landlord’s right of entry.

K.N. appeared as the Tenant. She was joined by J.S. who acted as her advocate. W.K. appeared as the Landlord’s agent.

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 Tenant advises that the Landlord was served with her Notice of Dispute Resolution, which the Landlord’s agent acknowledges receiving. Based on the acknowledged receipt without objection, I find that pursuant to s. 71(2) of the *Act* the Landlord was sufficiently with the Notice of Dispute Resolution.

The Landlord’s agent advises that the Tenant was served with the Landlord’s response evidence by way of registered mail sent on March 5, 2023. The Landlord provides proof of service in the form a registered mail tracking receipt. When I asked the Tenant if she received the Landlord’s evidence, the Tenant and her advocate equivocated and argued that the Landlord was not provided with a forwarding address.

During the hearing, I reviewed the tracking information provided to me by the Landlord, which showed that the package retrieved on March 11, 2023 and signed for by the recipient. Upon my advising the Tenant of the same, she acknowledged receiving the Landlord’s evidence. I find that the Landlord’s response evidence was served in

accordance with s. 89 of the *Act*. Based on the tracking information, I find that the Tenant received it on March 11, 2023.

Preliminary Issue – Style of Cause

Policy Guideline #43 provides guidance with respect to the naming of parties specifying that the correct spelling for a party's legal name ought to be used.

The Tenant's application names the Landlord differently than it is named in the tenancy agreement and the 10-Day Notice in that she included W.K. and a corporate entity as the Landlord. I enquired who, in fact, was the Landlord. W.K. confirmed that he is an employee of the Landlord and the Landlord is properly named as the corporate entity listed in the tenancy agreement. I proposed amending the style of cause to reflect the Landlord as it named itself in the tenancy agreement and no one took issue with my doing so. Accordingly, I amend the Tenant's application to correct the spelling of the Landlord such that it reflects the spelling as listed in the tenancy agreement.

Preliminary Issue – Tenant Vacated the Rental Unit

The parties advise that the Tenant has vacated the rental unit. The Tenant says she vacated on February 10, 2023. The Landlord's agent says the tenancy ended on February 28, 2023.

Despite the difference between the parties on when the tenancy ended, there is no dispute that the tenancy is over and that the Landlord has taken possession of the rental unit. As such, the questions of whether the Landlord is entitled to an order of possession and whether the Tenant is entitled to restrict the Landlord's access to the rental unit are moot.

Accordingly, I dismiss the Tenant's claim under s. 70 to restrict the Landlord's right of entry without leave to reapply. Further, I do not consider s. 55(1) of the *Act*, which grants respondent landlords an order of possession should a notice to end tenancy be upheld at the hearing. The hearing proceeded strictly on the issue of unpaid rent, if any, and whether it could be ordered under s. 55(1.1) of the *Act*.

Issues to be Decided

- 1) Is the 10-Day Notice enforceable?

2) If so, is the Landlord entitled to an order for unpaid rent?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

The parties confirm the following details with respect to the tenancy:

- The Tenant moved into the rental unit on August 1, 2021.
- At the end of the tenancy, rent of \$1,770.00 was due on the first of each month.
- The Tenant paid a security deposit of \$750.00 and a pet damage deposit of \$600.00 to the Landlord.

I am provided with a copy of the tenancy agreement by the Landlord. I am further advised by the Landlord's agent that the parties had been before the Residential Tenancy Branch in October 2022. I have noted the file number provided to me on the cover page of this decision. The Tenant's advocate confirms that the file number provided is correct. Review of that matter shows that the parties agreed that monthly rent from November 1, 2022 onwards would be for \$1,770.00.

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.

The Landlord's agent advises that the 10-Day Notice was posted to the Tenant's door on February 2, 2023 after the Tenant failed to pay rent on February 1st. The Tenant acknowledges receiving the 10-Day Notice on February 2, 2023. I find that the 10-Day Notice was served on February 2, 2023 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 provided to me by the Tenant 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).

The Tenant's advocate admitted that the Tenant did not pay rent of \$1,770.00 on February 1, 2023 and argued that she did not do so because of safety concerns she had at the residential property. As characterized by the Tenant's advocate, the Tenant had the choice to either stay and deal with the safety issues or leave. The Landlord's agent denies the allegations raised by the Tenant.

Pursuant to s. 26(1) of the *Act*, 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 *Act* grants the tenant the right to deduct all or a portion of the rent. The *Act* establishes a limited set of circumstances in which a tenant may deduct money from rent, including:

1. Where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2)).
2. The reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8)).
3. Where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)).
4. As ordered by the Director pursuant to ss. 65 and 72.

I find that none of these are applicable here. I find that the Landlord has established that the Tenant failed to pay rent in accordance with the tenancy agreement and that the 10-Day Notice was properly issued. The Tenant's application cancelling the 10-Day Notice is hereby dismissed without leave to reapply.

Section 55(1.1) of the *Act* provides that where 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. As that is the case here, I grant the Landlord an order for unpaid rent totalling \$1,770.00, which is the amount that was admitted by the Tenant to not have been paid.

Though not strictly necessary, I wish to make clear that I have considered when the tenancy ended and make no findings on this question as it is not necessary for me to do

so. There is no dispute that rent in full is due on the first of each month. There is also no dispute that the Tenant vacated the rental unit after she ought to have paid rent in full on the first. It is irrelevant whether the Tenant vacated mid-month or at the end of the month. Her obligation to pay rent in full was triggered on February 1, 2023 and she admits that she did not do so.

Conclusion

As the tenancy ended before the hearing, I dismiss the Tenant's claim under s. 70 of the *Act* restricting the Landlord's right of entry without leave to reapply.

The Landlord has established that the 10-Day Notice was properly issued under the *Act*. I dismiss the Tenant's application to cancel the 10-Day Notice without leave to reapply.

As the Landlord has already taken possession of the rental unit, I decline to grant an order of possession pursuant to s. 55(1) of the *Act*.

I grant the Landlord an order for unpaid rent pursuant to s. 55(1.1) of the *Act*. I order that the Tenant pay **\$1,770.00** in unpaid rent to the Landlord.

It is the Landlord's obligation to serve the monetary order on the Tenant, which may be enforced at the BC Provincial Court should the Tenant fail to comply.

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: April 25, 2023

Residential Tenancy Branch