



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 February 2, 2023 (the “10-Day Notice”).

W.V. appeared as 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, it was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord 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 advises that he served the Tenant with his response evidence by posting it to the Tenant’s door on April 17, 2023. The Landlord further advises that he texted the Tenant on the same date to confirm if she received his evidence. I am told by the Landlord that the Tenant did confirm with him that she had received it. I find that the Landlord has served his response evidence on the Tenant in accordance with the *Act*.

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?

Evidence and Analysis

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 Landlord confirms the following details with respect to the tenancy:

- The tenants moved into the rental unit on December 10, 2022.
- Rent of \$1,700.00 is due on the first of each month.
- A security deposit of \$850.00 and a pet damage deposit of \$850.00 was paid by the tenants.

I am provided with a copy of the tenancy agreement by the parties.

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 advises that the 10-Day Notice was posted to the tenants' door on February 2, 2023. I accept the Landlord's undisputed evidence and find that this was done in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the tenants received the 10-Day Notice on February 5, 2023.

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 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, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30). The effective date of the notice is incorrect, though I find this issue is irrelevant as it is corrected to February 15, 2023 automatically by application of s. 53 of the *Act*.

Review of the 10-Day Notice shows the Landlord listed his address as the same as the rental unit's address. I enquired with the Landlord whether he lived at the property. The

Landlord says that he does but lives in a separate suite and does not share a kitchen or bathroom with the tenants' rental unit.

The Landlord advises that he served the 10-Day Notice as the tenants failed to pay rent on February 1, 2023. I am told by the Landlord that the tenants made a \$1,700.00 rent payment on March 1, 2023 but otherwise no other payment was received by the Landlord since serving the 10-Day Notice. The Landlord says that he is in shortfall of rent receipts for the months of February and April 2023.

I accept the Landlord's undisputed testimony and find that the 10-Day Notice was properly issued after the tenants failed to pay rent due under the tenancy agreement. I hereby dismiss the Tenant's application cancelling the 10-Day Notice 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 Landlord an order of possession effective that is two days after it is received.

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. I accept the Landlord's undisputed testimony that the tenants failed to pay rent for February and April 2023. I find that the Landlord has established an unpaid rent claim of \$3,400.00 (\$1,700.00 + \$1,700.00).

I direct that pursuant to s. 72(2) of the *Act* that the Landlord retain the security deposit, pet damage deposit, and interest, totalling \$1,710.54 (\$850.00 + \$850.00 + \$10.54), in partial satisfaction of his unpaid rent claim.

I grant a total monetary order of \$1,689.46 (\$3,400.00 - \$1,689.46).

Conclusion

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

I grant the Landlord an order of possession pursuant to s. 55(1) of the *Act*. The Tenant and any occupants shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order.

I grant the Landlord an order for unpaid rent pursuant to s. 55(1.1) of the *Act*. I order that the Tenant pay **\$1,689.46** to the Landlord.

It is the Landlord's obligation to serve these orders on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. 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: April 26, 2023

Residential Tenancy Branch