



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Brendan Shaw Real Estate
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDCT, FFT

Introduction

On December 12, 2022 the Tenants (hereinafter, 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 December 8, 2022. They also applied for compensation for monetary loss, and reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 21, 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 1114am to enable them to call in to this teleconference hearing scheduled for 11:00am. 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, an 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 December 8, 2022 10-Day Notice. This is without leave to reapply on this issue.

Background and Evidence

The evidence shows the Landlord issued and served the 10-Day Notice to the Tenant on December 7, 2022. This was for continued unpaid rent and set the final move-out date as December 20, 2022. The Landlord, as evidence, provided a record of their service of this 10-Day Notice by leaving it in the mailbox at the rental unit. 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 Landlord's evidence they provided for this hearing. This shows the final end-of-tenancy date for December 20, 2022. On page 2 of the document the Landlord provided the amount of \$7,300 as owed by the Tenant on December 1, 2022. This was an accumulation of unpaid rent over consecutive months prior to December 2022: \$700 only paid on July 3, no rent paid for August, November, and December 2022.

In the hearing, the Landlord advised there were no rent payments for any of the months of January through to April of 2023. This accumulated to the balance owing, as of the date of the hearing, at \$15,300.

Analysis

From the copy of the tenancy agreement in the Landlord's evidence, and the Landlord's testimony confirming the details, I conclude the amount of \$2,000 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 December 15, within the five days granted under s. 46(4) of the *Act*, and accounting for a 3-day deemed service, as per s. 90(d). 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 and evidence 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* s. 55(1.1) allows for a landlord to recover rent in the situation where a tenant's application to cancel a 10-Day Notice is dismissed. In line with this, I grant an order requiring the payment of the unpaid rent. This is \$15,300 as per the Landlord's evidence and testimony.

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.

Pursuant to s. 55(1.1) of the *Act*, I grant the Landlord a Monetary Order in the amount of \$15,300.00 for compensation set out above. I provide this Monetary Order in the above terms and the Landlord must serve the Monetary Order to the Tenant as soon as possible. Should the Tenant fail to comply with the Monetary Order, the Landlord may file it in the Small Claims Division of the Provincial Court 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: April 21, 2023

Residential Tenancy Branch