



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding SUNWEST AVENUE INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR-MT, FFT

Introduction

On January 17, 2023, the Tenant filed their Application at the Residential Tenancy Branch to dispute the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”). They also indicated they needed more time in which to file the Application outside the timeline set in the legislation, 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 May 12, 2023. The Landlord attended the conference call hearing; a housing support work, unknown to the Landlord, attended on the Tenant’s behalf.

At the start of the hearing, the Landlord confirmed they received the Tenant’s Notice of Dispute Resolution Proceeding, generated at the Residential Tenancy Branch and sent to the Tenant when they applied. The package they received from the Tenant in the mail included a copy of the 10-Day Notice. This appears in the evidence the Tenant provided to the Residential Tenancy Branch.

Preliminary Matter – Tenant’s Application timeline

The copy of the 10-Day Notice, as provided to the Residential Tenancy Branch by the Tenant with their Application, shows it was served by the Landlord to the Tenant on January 6, 2023. In the hearing, the Landlord stated they served this to the Tenant by attaching it to the door on January 6, 2023. This was in the presence of the Tenant’s family member who was there at the time.

The document as provided by the Tenant to the Residential Tenancy Branch for this hearing shows the clear information at the top of the document:

You have 5 days to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date on the Notice.

On their Application at the Residential Tenancy Branch on January 17, 2023 the Tenant indicated they needed more time to dispute the One-Month Notice. The Tenant on their Application provided that they “did not make it to the [Residential Tenancy Branch] office as I have to take my mother to her medical appointments.”

The Tenant did not attend the hearing to address this directly.

In regard to the tenant’s request to file the Application after the dispute period, the *Act* outlines the following:

66(1) The director may extend a time limit established by this Act only in exceptional circumstances. . .

In these circumstances, I find that the Tenant did not prove the conditions that prevented them from applying within the required timeline. The housing support worker who attended on their behalf did not address this. I find the Tenant is not entitled to more time to dispute the 10-Day Notice.

The Landlord served this 10-Day Notice on January 6, 2023. I deem service to have occurred three days after the Landlord attached the document to the Tenant’s door on that date, as per s. 90(c). This was January 9, 2023. The Tenant failed to apply for dispute resolution within the specified time limit of 5 days after they received it, by January 14, 2023. Furthermore, and as noted above I have found the tenant is not entitled to more time to dispute the 10-Day Notice. On this basis, I find the tenant is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date on the One-Month Notice: January 17, 2023.

On this single issue, I dismiss the Tenant’s Application, without leave to reapply.

Preliminary Matter – Tenant’s non-attendance in the hearing

A housing support worker, unknown to the Landlord prior to this hearing, attended on the Tenant’s behalf. They stated they had the information about this hearing directly from the Tenant. As stated above, the Tenant did not attend the hearing.

The *Residential Tenancy Branch Rules of Procedure* allow for a party to a hearing to be assisted by an advocate, or “any other person whose assistance the party requires in order to make their presentation.” The Landlord did not directly object to the other’s attendance; however, they did express that they did not know who this person was.

I note Rule 6.8 states an arbitrator *may* require an agent to provide proof of their appointment to represent a party. Given the attendee’s role, and their description of wanting to assist both the Landlord and the Tenant in this situation, I waive that requirement for the purpose of completing the scheduled hearing.

Issues to be Decided

Is the Landlord entitled to an Order of Possession in line with the 10-Day Notice, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to compensation for rent amounts in the rental unit, pursuant to s. 55(1.1) and/or s. 67 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee for their Application, pursuant to s. 72 of the *Act*?

Background and Evidence

Neither the Tenant nor the Landlord prepared a copy of the tenancy agreement for this hearing. In the hearing, the Landlord confirmed the basic terms of the tenancy agreement. This was rent at \$1,500 payable on the first of each month. The Landlord was not aware of the actual start date, having come into this tenancy as the Landlord in late 2022 after their purchase of the property. The Tenant’s support stated the tenancy started “2 or 3 years ago.”

As set out above, the Landlord issued the 10-Day Notice on January 6, 2023 for the set end-of-tenancy date of January 17, 2023. This was for the unpaid rent amount of \$1,500 that was due on January 1, 2023.

In the hearing, the Landlord provided that the Tenant did not pay rent since that time. This is for the subsequent months February through to May 2023. The Landlord provided this was the full amount of rent for each month. They tried to contact the Tenant via phone, email, and in person at the rental unit. While the Tenant's family member assured the Landlord that the Tenant would contact them, the Tenant did not do so.

The Tenant's support in the hearing stated they communicated with the Tenant who stated they received a Four-Month Notice to End Tenancy for the Landlord choosing to demolish the rental unit. The Landlord confirmed they served such a notice to the Tenant on December 28, 2022. The Landlord stated the Tenant did not dispute this 4-month notice; however, that does not entitle the Tenant to free rent.

Progressing with the amount of \$1,500 for the subsequent four months, the balance comes to \$7,500.

The Tenant did not attend to present their version of events; therefore, there is no evidence contrary to that of the Landlord in this dispute.

Analysis

I find the record clear to establish that the basic rent amount was \$1,500 at the time the Landlord served the 10-Day Notice on January 6, 2023. There is no information to indicate otherwise in the evidence, and the Tenant's representative in the hearing did not state otherwise.

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not a landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. The wording appears thus:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations of the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The *Act* s. 46(1) provides authority for a landlord to issue a notice to end a tenancy if rent is unpaid “on any day after it is due”, with an end-of-tenancy date that is “not earlier than 10 days after the date the tenant receives the notice.”

In this dispute the Landlord issued the 10-Day Notice on January 6, 2023. The Tenant did not complete rent payments within 5 days of being served the Notice of Dispute Resolution Proceeding. Otherwise, I have dismissed the Tenant’s Application for their late Application.

I conclude the Tenant did not pay the full rent amount as required. The *Act* s. 26 applies and the Tenant had no authority to withhold rent as a result of receiving a four-month notice to end tenancy from the Landlord. The validity of that notice was not the subject of this hearing. I find the Tenant breached s. 26 of the *Act*, and further breached s. 46(4) by not paying the full amount of the overdue rent.

Under s. 55 of the *Act*, when the Tenant’s Application to cancel a notice to end tenancy is dismissed, and I am satisfied the document complies with the requirements of s. 52 regarding form and content, I must grant a landlord an order of possession.

On my review, I find the 10-Day Notice complies with the requirements of form and content; therefore, the Landlord here is entitled to an Order of Possession.

The *Act* s. 55(1.1) specifies that I must grant repayment of unpaid rent. This amount is \$7,500.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The Landlord here has established a claim of \$7,435. After setting off the \$750 security deposit, there is a balance of \$6,750. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$6,750 as compensation for the rent amounts owing.

The Tenant was not successful on their Application; therefore, I grant no reimbursement of the Application filing fee to them.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the 10-Day Notice, without leave to reapply. I dismiss the other grounds on their Application, without leave to reapply.

I grant an Order of Possession to the Landlord, effective **TWO DAYS** after they serve it to 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 may be enforced as an Order of that Court.

I order the Tenant to pay the Landlord the amount of \$6,750, pursuant to s. 55(1.1) of the *Act*. I grant the Landlord a monetary order for this amount. The Landlord may file this monetary order in the Provincial Court (Small Claims) 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: May 12, 2023

Residential Tenancy Branch