



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, LRE, OPR-DR, MNR-DR, FFL

Introduction

On January 25, 2023, the tenant applied to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) issued on January 9, 2023, and to suspend the landlord’s right to enter the rental unit.

The landlord then filed three separate applications for an order of possession and unpaid rent based on three additional 10 Day Notices, dated February 2, 2023, March 1, 2023, and April 1, 2023.

All four applications were set to be heard together by telephone conference call at 9:30 am on May 19, 2023.

The landlord served the notice of hearing for the February 10 Day Notice by posting the proceeding package to the door of the rental unit on February 19, 2023. The landlord served the notices of hearing for the March and April 10 Day Notices by email to the tenant’s pre-agreed email address for service on March 29, 2023, and April 19, 2023.

The landlord provided copies of the outgoing emails and the addendum to the tenancy agreement indicating the tenant’s pre-agreed email address for service.

Based on the landlord’s affirmed testimony and evidence, I find that the tenant was sufficiently served with notice of the landlord’s applications.

Issue(s) to be Decided

1. Is the tenant entitled to cancel the January 10 Day Notice and suspend the landlord’s right to enter?
2. Is the landlord entitled to an order of possession and unpaid rent?
3. Is the landlord entitled to recover their filing fees?

Facts and Analysis

1. Is the tenant entitled to cancel the January 10 Day Notice and suspend the landlord's right to enter?

The tenant did not attend the hearing although the line remained open for 15 minutes. Therefore, I dismiss the tenant's application without leave to reapply.

2. Is the landlord entitled to an order of possession and unpaid rent?

The landlord provided a copy of the tenancy agreement. The tenancy started on November 21, 2022, rent was \$1,300.00 due on the first of each month, and the landlord holds a security deposit of \$650.00. The agreement included an addendum indicating the tenant agreed to receive documents by email.

The landlord affirmed that the tenant is still living in the rental unit. The last payment the landlord received from the tenant was rent for January 2023, which was paid in full in two installments.

As the landlord has not submitted nor relied on the January 10 Day Notice, I will turn to the most recent 10 Day Notice, issued April 1, 2023.

The April 10 Day Notice was issued and served to the tenant's email on the same day that rent was due, and a landlord cannot end a tenancy for unpaid rent until **after** it is due under section 46 of the Act.

However, the tenant owed rent for February and March at the time the April 10 Day Notice was issued. Therefore, I can determine that the 10 Day Notice was valid, and it complied with section 52 of the Act.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the five days granted under section 46(4) of the Act and did not dispute the 10 Day Notice within that five-day period.

Therefore, as the tenant's application is dismissed, I find the landlord is entitled to an order of possession and a monetary order, pursuant to section 55 of the Act.

I grant an order of possession to the landlord effective two (2) days after service of this order on the tenant.

I find that the landlord is entitled to monetary order for the unpaid rent, pursuant to section 55(1.1) of the Act from February 2023 to May 2023 in the amount of \$5,200.00.

I order that the landlord retain the security deposit plus interest of \$654.97 in partial satisfaction of their claim and I grant the landlord an order under section 67 of the Act for the balance due of \$4,545.03.

3. Is the landlord entitled to recover their filing fees?

As the landlord was successful, I find they are entitled to recover their filing fee. However, I limit the amount to \$100.00 because the landlord was only required to file one application.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant an order of possession to the landlord effective two (2) days after service of this order on the tenant. Should the tenant or anyone on the premises fail to comply with this order, it may be filed and enforced as an order of the Supreme Court of British Columbia.

I grant the landlord a monetary order in the amount of \$4,645.03 for rent owing from February to May 2023 and one filing fee. The tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court 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: May 23, 2023

Residential Tenancy Branch