



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR-MT, OLC

Introduction

The Tenant applied for dispute resolution (“Application”) and seeks an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”). They are also seeking an extension to file their Application under section 66 of the Act and for the Landlord to comply with the Act, regulation or the tenancy agreement under section 62 of the Act.

The Tenant and an Agent for the Landlord, O.A., attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Tenant testified they served the Notice of Dispute Resolution Package (the “Materials”) on the Landlord on March 23 via registered mail. The Landlord confirmed receipt of the Materials and raised no issues with service. I find that pursuant to sections 89 and 90 of the Act that the Tenant’s Materials were sufficiently served to the Landlord.

O.A. testified that the Landlord’s evidence was served to the Tenant by registered mail on April 18, 2023. They were able to access the tracking facility on the Canada Post website during the hearing and confirmed that the item was available for pick up since April 20, 2023 and that a notification card had been left. The tracking number provided by Canada Post is listed on the front page of this Decision.

The Tenant denied receiving the Landlord’s evidence or any notifications from Canada Post. As testimony of the Landlord’s Agent was more precise and clearer and they were

able to provide specific dates relating to the matter at hand, I find on the balance of probabilities that the Landlord's evidence was served to the Tenant in accordance with sections 88 and 90 of the Act and I admit it to consideration.

Preliminary Issue: Severing

The Tenant applied for multiple remedies under the Act, some of which were not sufficiently related to one another.

Rule 2.3 of the *Rules of Procedure* states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the issues raised by the Tenant, I determined that the primary issue is the Tenant's request to cancel the Notice and I exercised my discretion to dismiss with leave to re-apply, all claims other than the one related to the Notice.

Issues to be Decided

- 1) Should the Notice be cancelled?
- 2) If not, is the Landlord entitled to an Order of Possession?
- 3) Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy started on June 1, 2022.
- Rent is \$1,441.00 per month due on the first day of the month.
- A security deposit of \$958.50 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement ("Tenancy Agreement") which was entered into evidence by the Landlord.
- The Tenant still occupies the rental unit.

The Landlord's Agent testified as follows. The Tenant has a history of rental arrears dating back to August 2022. A payment plan had been put in place, but the Tenant had defaulted on this.

The Notice was served to the Tenant on March 16, 2023 via registered mail. A copy was entered into evidence by both parties. The Notice is signed March 16, 2023 and provides outstanding rent of \$3,823.00 as of March 1, 2023. The effective date provided on the Notice is March 29, 2023.

An inspection of the rental unit was conducted by agents of the Landlord on March 22, 2023. During the inspection, the Tenant stated they did not get the Notice. It was pointed out to the Tenant that there was notification card from Canada Post on the Tenant's mailbox and the Tenant went to retrieve their mail from the post office.

Since the Notice was issued, the Tenant made one rent payment on April 26, 2023 in the amount of \$1,441.00. A receipt for "use and occupancy" was issued. As of May 1, 2023 the total rental arrears stands at \$5,264.00.

The Landlord seeks an Order of Possession and does not want to enter into another payment plan with the Tenant.

The Tenant testified as follows. They did not get the Notice until the day of the inspection, which they thought was March 21, 2023. When they checked their mailbox and saw the delivery notice, they went to collect the Notice. They emailed an Agent of the Landlord and stated they could contact a rent bank to seek help but did not get a reply.

The Tenant acknowledged they had rental arrears and stated their only source of income was income assistance as they had been off work sick. They have sought advice on consumer proposals and insolvency. They do have funds in their bank account but they are on hold until they clear.

The Tenant agreed that rental arrears as of May 1, 2023 are \$5,264.00.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent.

The Act sets out limited circumstances in which monies claimed by the tenant can be deducted from rent, which include:

- when a tenant has paid a security or pet deposit above the allowed amount;
- reimbursement of costs incurred by the tenant for emergency repairs;
- when a landlord collects rent for a rent increase that does not comply with the *Residential Tenancy Regulation*;
- if the landlord gives authorization for the Tenant to withhold rent; or
- as ordered by the Director.

The Tenant put forward no evidence to indicate that any of the above circumstances are applicable, nor are any apparent to me. Therefore I am satisfied that rent in the amount of \$3,823.00 was due on March 1, 2023.

The Tenant provided evidence and testimony regarding recent events in their personal life which gave an explanation as to why rent had not been paid. Whilst I have sympathy for the Tenant and their situation, the Act does not allow me to consider these as valid reasons for non-payment of rent.

Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

The Tenant applied for an extension of the time limit to apply for Dispute Resolution under section 66 of the Act. I find this is not necessary as the Notice was served on the Tenant by registered mail on March 16, 2023 so would have been deemed served five days later in accordance with section 90(a) of the Act. Accordingly, the Notice would have been deemed received on March 21, 2023. As the Tenant submitted their Application on March 22, 2023, I find this was within the five day period set out in section 46(4) of the Act so no extension to this period is necessary.

Both the Landlord's evidence and the Tenant's own testimony show that the Tenant did not pay the rent on March 1, 2023. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52 of the Act. As a

result, the Tenant's Application to cancel the Notice is dismissed without leave to reapply.

Section 53 of the Act provides that incorrect effective dates automatically changed which is of relevance here as the effective date of the Notice should read March 31, 2023 instead of March 29, 2023.

Based on the above findings, the Landlord is granted an Order of Possession under section 55(1) of the Act. A copy of the Order of Possession is attached to this Decision. It is the Landlord's obligation to serve the Order of Possession on the Tenant. 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.

The Tenant has two days to vacate the rental unit from the date of service or deemed service. I find that the Tenancy ended on March 31, 2023 in accordance with the Notice.

Since the Application relates to a section 46 notice to end tenancy, the Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenant is ordered to pay \$5,264.00 in unpaid rent to the Landlord.

Under section 38(4)(b) of the Act, the Landlord is ordered to retain the security deposit in partial satisfaction of the payment order. A Monetary Order for the remaining amount is attached to this Decision. It is the Landlord's obligation to serve the Monetary Order on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

| Item | Amount |
|------------------------|-------------------|
| Unpaid rent | \$5,264.00 |
| Less: security deposit | (\$958.50) |
| Total | \$4,305.50 |

Conclusion

The Application is dismissed without leave to reapply.

The Landlord is issued an **Order of Possession**.

The Landlord is issued a **Monetary Order**.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: May 03, 2023

Residential Tenancy Branch