



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNE, LRE, OLC, FFT

Introduction

On February 17, 2023, the Tenant finalized their Application at the Residential Tenancy Branch for the following:

- to dispute the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”)
- to dispute a One Month Notice to End Tenancy for Cause (the “One-Month Notice”)
- suspended/set conditions on the Landlord’s right to enter the rental unit
- the Landlord’s compliance with the legislation and/or tenancy agreement
- 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 June 12, 2023. The Landlord attended the conference call hearing; the Tenant did not attend.

At the start of the hearing, the Landlord stated they received the Tenant’s Notice of Dispute Resolution Proceeding, generated at the Residential Tenancy Branch and sent to the Tenant when they applied.

Preliminary Matter – Tenant’s attendance

The Tenant did not attend the hearing, although I left the teleconference hearing open until 11:30am 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 in its entirety, without leave to reapply.

The Tenant provided evidence to the Residential Tenancy Branch on May 23, 2023. The Landlord stated they did not receive a copy of this evidence. Without the Tenant in attendance to verify service, I give this evidence no consideration in this decision because doing so would be prejudicial to the Landlord.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession in line with a notice to end tenancy, 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*?

Background and Evidence

In the hearing, the Landlord confirmed the basic details of the tenancy agreement. The tenant started in approximately November or December of 2020. The rent started at \$900, and during the tenancy the Landlord raised the rent amount one time to the current rent amount of \$913.50. The Tenant paid a security deposit of \$450 at the start of the tenancy.

The Landlord stated that they issue a rent receipt when a Tenant pays the rent in cash. When a tenant pays with a money order or "cashier cheque" as the Tenant here had done recently, the Landlord did not issue a receipt because the Tenant would have their own copy of that order/cheque.

The Landlord issued the 10-Day Notice on February 10, 2022, for the set end-of-tenancy date of February 20, 2022. This was for the unpaid rent amount of \$913.50 that was due on February 1, 2022.

In the hearing, the Landlord described sending a demand letter to the Tenant for this amount of February 6, 2023. They repeated the content of the letter in the hearing that stated it was

“official notice”, asking the Tenant to “pay immediately or face eviction.” They attached this demand letter to the Tenant’s door on February 6, 2023.

The Landlord reviewed the Tenant’s payment of rent over the ensuing months. They paid their rent for March, April, May, and June 2023. The rent for February, according to the Landlord in the hearing, remained unpaid as of the date of the hearing.

The Landlord also recalled the Tenant’s response on February 1, when asked about the rent amount owing, with the Tenant stating they did not have it on them.

The Landlord also issued the One-Month Notice on February 10, 2023. This was for the move-out date of March 12, 2023.

The Landlord indicated the following reasons on page 2:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

The Landlord provided handwritten details on page 2:

Tenant has engaged in illegal activity, selling cigarettes to people. Several times a day people will come pick up cigarettes, speed and disrupting other tenants, even after [the Tenant] was repeatedly told to stop, selling cigarettes. When told to stop, purchasers often became confrontational and aggressive.

The Landlord in the hearing described having to constantly maintain the rental unit property for this activity. They described cars driving briskly into the rental unit property for the purpose of others’ visits to the Tenant in order to purchaser cigarettes. The Landlord often observed others leaving with cartons of cigarettes.

Analysis

I find the Landlord clearly presented that the basic rent amount was \$913.50. I find as fact the Tenant paid a \$450 security deposit at the start of the tenancy.

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 February 10, 2023. I find as fact that the Tenant did not complete rent payments within 5 days of being served the Notice of Dispute Resolution Proceeding. This is by February 19, 2023, accounting for 3 days of deemed service as per s. 90(c) of the *Act*. I find Landlord’s 10-Day Notice is valid.

Additionally, I have also dismissed the Tenant’s Application for their non-attendance in the hearing.

I conclude the Tenant did not pay the full rent amount as required. The *Act* s. 26 applies and the Tenant had no authorization to withhold rent. Nor did they have any authority from the tenancy agreement. 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 tenancy is ending via the 10-Day Notice; therefore, I order the One-Month Notice is void and of no force or effect.

The *Act* s. 55(1.1) specifies that I must grant repayment of unpaid rent. This amount is \$913.50.

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 \$913.50. After setting off the \$450 security deposit, there is a balance of \$463.50. I am authorizing the Landlord to keep

the security deposit amount and award the balance of \$463.50 as compensation for the rent amounts owing, as presented by the Landlord in the hearing.

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 \$463.50, 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: June 12, 2023

Residential Tenancy Branch