



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding CAPREIT LIMITED PARTNERSHIP and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR-MT, FFT, OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with the Tenant's May 10, 2023 application and the Landlord's May 19, 2023 application pursuant to the *Residential Tenancy Act* (the Act) for:

- An extension of the timeline for disputing the 10-Day Notice for Unpaid Rent (the 10-Day Notice), pursuant to section 66.
- An order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent pursuant to sections 46 and 55.
- A monetary order for unpaid rent pursuant to section 67
- An authorization to recover the filing fee for this application, under section 72

Issues to be Decided

Is the Tenant entitled to more time to dispute the Landlord's 10-Day Notice?

Should the Landlord's 10-Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession and Monetary Order?

Is the Landlord or Tenant entitled to recover the filing fee for this application from the Tenant?

Facts and Analysis

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on December 1, 2020, with a monthly rent of \$1,361.41, due on 1st day of the month, with a security deposit in the amount of \$657.50.

The Landlord served a 10-Day Notice on the Tenant on May 2, 2023 for unpaid rent from March 2021. The Tenant testified that they found the 10-Day Notice stuck under the front door carpet on May 4, 2023.

The Landlord's Agent CM (the "Landlord's Agent") testified that the 10-Day Notice was issued because of unpaid rent from the beginning of the tenancy. The Landlord's Agent further testified that they have attempted a settlement with the Tenant regarding another issue and offered a credit towards that unpaid rent. The Landlord's Agent advised that the Landlord signed the settlement letter, but the Tenant will not sign. The Landlord's Agent argued that it has been over 2 years of trying to work out the settlement and the Landlord has now decided to move forward with issuing the 10-Day Notice for the unpaid rent.

The Tenant does not dispute that they have not accepted the credit towards the unpaid March 2021 rent but argues it is because the Landlord would not agree to remove a line from the settlement agreement.

The Tenant argued that they were not able to dispute the 10-Day Notice within the required time frame because when they were waiting to hear back from the Landlord about whether the Landlord would agree to a discussion. The Tenant went on to state that they waited to hear back but no one got in touch with them. Additionally, the Tenant stated that because the 10-Day Notice was found under the door this delayed their response. The Landlord's Agent testified that the 10-Day Notice was posted on the door of the rental unit. Submitted into evidence by the Landlord is a proof of service for the 10-Day Notice, where it states the 10-Day Notice was posted on the door and a witness signature was included.

Is the Tenant entitled to more time to cancel the Landlord's 10-Day Notice?

Section 46 of the Act states that upon receipt of a 10-Day Notice, the tenant must, within 5 days, either pay the full amount of the arrears as indicated on the 10-Day Notice or dispute the 10-Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

I find that the 10-Day Notice was served on the Tenant on May 2, 2023 and the Tenant received the 10-Day Notice May 4, 2023, and that the Tenant had until May 9, 2023, to dispute the 10 Day Notice or to pay the full amount of the arrears.

The Tenant has applied for dispute resolution requesting more time to cancel a notice to end tenancy. Section 66 of the Act states that the director may extend a time limit established by the Act only in exceptional circumstances. Based on Policy Guideline 36, the word “exceptional” requires a very strong and compelling reason that something was not done within the time required.

The Tenant argued the reason they did not meet the deadline was because they were waiting to see if the Landlord would agree to a discussion about the 10-Day Notice. I find that this does not qualify as an exceptional circumstance. While I accept that the Tenant was hoping to work out an agreement with the Landlord, they could have disputed the 10-Day Notice while they waited for a response. Additionally, even if the Tenant had filed within the deadline, the Tenant has not provided any evidence of a legal reason for withholding rent.

Additionally, the Tenant argued that part of the reason they were unable to dispute the notice on time was because the 10-Day Notice was under the door of the rental unit. The Tenant also testified that they found the 10-Day Notice on May 4, 2023. I have counted the 5-day deadline from the date the Tenant advised they received the 10-Day Notice and the Tenant still did not meet the deadline required.

For the above reasons, the Tenant's application for an extension of the time limit to dispute the 10 Day Notice is dismissed, without leave to reapply.

Should the Landlord's 10-Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession and Monetary Order?

Since the Tenant failed to file to dispute the 10-Day Notice within the time limit for doing so and their request for more time was denied, the Tenant's request to cancel the 10-Day Notice is dismissed.

Based on the testimony and evidence provided, I find that the Tenant was served with the 10-Day Notice in accordance with the Act and for the valid reason of non-payment of rent. The 10-Day Notice is included in the evidence and I find the 10-Day Notice meets the form and content requirements of section 52 of the Act.

Based on the evidence before me, I find the Tenant failed to pay the full amount owing within 5 days of receiving the 10-Day Notice and did not make an application under section 46(4) of the Act within the same timeframe. In accordance with section 46(5) of the Act, due to the failure of the Tenant to take either of these actions within 5 days, I find the Tenant is conclusively presumed to have accepted the end of this tenancy.

Therefore, I find that the Landlord is entitled to an Order of Possession based on unpaid rent under sections 46 and 55 of the Act.

The Tenant advised they have not accepted the credit previously offered by the Landlord. Since the credit was never agreed to, I find that the \$657.50 in unpaid rent from March 2021 is still owed. I find the Landlord is entitled to a monetary order for the unpaid rent, pursuant to section 55(1.1) of the Act in the amount of **\$657.50**. I order that the Landlord retain the security deposit of **\$657.50** in satisfaction of the claim.

Is the Landlord or Tenant entitled to recover the filing fee?

Because the Landlord was successful, I order the Tenant pay the Landlord \$100.00 in respect of the filing fee in accordance with section 65(1) of the Act. I grant the Landlord a monetary order of \$100.00. As the Tenant was not successful, I decline to grant them the filing fee.

Conclusion

The Tenant's application is dismissed, without leave to reapply. The Landlord is authorized to retain the security deposit in satisfaction of the unpaid rent. The Landlord is granted an Order of Possession and a Monetary Order for the filing fee. 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 Monetary order may be filed in the Provincial Court and enforced as an order of that Court.

At the end of the tenancy the Tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. Tenant and landlords both have an obligation to complete a move-out condition inspection at the end of the tenancy. To learn about obligations related to deposits, damage and compensation, search the [RTB website](#) for information about after a tenancy ends.

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: July 5, 2023

Residential Tenancy Branch