



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR (Tenants)
 OPER-DR, MNRL, FFL (Landlord)

Introduction

This hearing concerned the Tenants' application to cancel a 10 Day Notice to End Tenancy for unpaid rent issued June 7, 2023. The Landlord filed a cross-application for an Order of Possession based upon the 10 Day Notice issued June 7, 2023; a monetary award for unpaid rent; and, reimbursement from the Tenants of the filing fee.

Issues to be Decided

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

Is the Landlord entitled to a monetary award for unpaid rent?

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

Background and Evidence

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

Evidence was provided establishing that this tenancy began on October 1, 2022 for a fixed annual term and thereafter on a monthly basis. The monthly rent of \$2,100.00 is due on the first day of each month. The Landlord collected a security deposit in the amount of \$1,050.00 and a pet deposit in the amount of \$1,050.00 at the start of the tenancy and continues to hold these funds in trust.

The Landlord's agent S.M. testified that on June 7, 2023 a 10 Day Notice to End Tenancy was issued for unpaid rent in the amount of \$2,100.00 due June 1, 2023. The

effective date of the Notice was June 17, 2023. A copy of the Notice was submitted into evidence.

The Tenants are currently in possession of the rental unit. Tenant S.O. admitted that they were late paying rent for June 2023 but she had paid rent in cash to the Landlord's property manager on June 2 or 3, 2023. Similarly, the Tenant S.O. stated she paid rent in cash due July 1, 2023 on July 2, 2023 and paid August 1, 2023 rent in cash on August 1, 2023. Tenant S.O. testified that she always paid rent in cash, except for one e-transfer required by the Landlord for May 2023 rent. Tenant S.O. stated that Landlord's property manager would come to the rental unit, sometimes accompanied by a family member, to collect rent. Tenant S.O. testified that the Landlord's agent did not issue receipts for June, July or August 2023 rent alleging he stated that he was busy or would do so later. The Tenants did not submit bank records or comparable documents to support cash withdrawals for rent payments. Tenant S.O. testified she did not have cheques with which to pay rent, and preferred paying in cash as that was their practice.

The Landlord's agent S.M. testified that the Tenants had not paid rent for June, July or August, 2023. The Landlord submitted a ledger statement for the Tenants' account indicating that the Tenants had paid rent through April, 2023 in cash and a receipt had been issued each month. The Landlord's agent testified that rent was paid by e-transfer for May, 2023 because the Landlord had issued a 10 Day Notice for unpaid rent and insisted that the Tenants pay by e-transfer. The agent S.M. testified that he had requested the Tenants pay by e-transfer on several occasions. The agent stated that his practice was to collect rent from the Tenants at the rental unit, accompanied by his wife as a witness and she would issue the receipts.

The Landlord's agent testified that when rent was not paid on June 1, 2023, that he warned the Tenants the Landlord would issue a 10 Day Notice as the Landlord had in May, 2023. The Landlord submitted copies of text message exchanges regarding June 2023 rent. On June 1, 2023, the Landlord's agent texted Tenant S.O. to advise that rent was due and if not paid on time would result in the Landlord issuing a 10 Day Notice on June 2, 2023. Tenant S.O. responded on June 2, 2023 apologizing for being late with rent but stating she would pay "Mondayish" (that is, June 5, 2023). The Landlord's agent replied he would be required to issue the 10 Day Notice for unpaid rent. The Tenant's response was "they were trying their best" and would have the rent paid "asap."

There were no further text exchanges between the parties until June 15, 2023 when Tenant S.O. informed the Landlord's agent that they had disputed to the RTB the Landlord's issuance of the 10 Day Notice for unpaid rent due June 1, 2023. The agent replied inquiring how the Tenants could dispute the eviction as they had not paid rent, even though the Landlord had given the Tenants extra time to pay the rent. The Landlord's agent S.M. informs Tenant S.O. that the text messages may be used in any proceeding concerning the eviction. Tenant S.O. replied that she and Tenant G.T.B. "were doing their best" to pay rent under the circumstances.

The Landlord's agent testified consistent with the Tenants' ledger account that rent had not been paid for June, July or August, 2023, and had amended its dispute resolution package for the additional two months (July and August 2023) of unpaid rent. The Landlord's agent testified that unpaid rent totaled \$6,300.00. The Tenants' ledger indicates there was also a \$25.00 service charge on the account for late rent but the Landlord's agent presented no testimony regarding this charge.

Analysis

Should the Landlord's 10 Day Notice be cancelled?

Section 46 of the Act states that upon receipt of a 10 Day Notice, the tenant must, within five 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(s) do 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 issued June 7, 2023 was duly served to the Tenants by posting on the door of the rental unit and the Tenants state in their application for dispute resolution that they received the Notice on June 7, 2023. The Tenants had until June 12, 2023 to dispute the 10 Day Notice or to pay the full amount of the arrears. The Tenants did not apply for dispute resolution until June 16, 2023 when the application was deemed complete upon payment of the filing fee by the Tenants. The Tenants thus are conclusively presumed to have accepted the end of the tenancy under section 46(5).

Furthermore, I find the Landlord's submissions to be credible and forthright. The Landlord's agent's testimony was supported in all material aspects by documentary evidence. The Landlord's agent submitted a ledger indicating that whenever Tenants' paid rent in cash, a receipt was issued. This is consistent with a landlord's obligation under section 26(2) to issue a receipt for rent paid in cash. The text messages between Tenant S.O. and the Landlord's agent confirm the agent's testimony that June 2023 rent was unpaid. On June 15, 2023 when Tenant S.O. informs the property manager that they have filed an application to cancel the Notice, the agent states that rent was unpaid and Tenant S.O. does not contradict that statement.

The Tenant S.O. stated that when she asked for a receipt, the Landlord's agent stated he would provide one later. It is noted that if the Tenants were unable to get a rental receipt from the Landlord, a reasonable person in the Tenants' position would apply to the Residential Tenancy Branch for an order requiring the Landlord provide rental receipts for rent paid in cash.

I accept the Landlord's evidence regarding the Tenants' non-payment of rent. I find the Tenants' version of events to be unreliable and unsupported by evidence.

Therefore, I find the Tenants failed to apply for dispute resolution or pay the rent owing within five days of service of the Notice. Thus, the tenancy has ended, and the Landlord is entitled to an order of possession.

Is the Landlord entitled to a monetary award for unpaid rent?

Section 26 of the Act requires a tenant to pay rent the day it is due unless they have a legal obligation to withhold some or all of the rent.

Section 55(1.1) provides that where a tenant has applied for dispute resolution to dispute a notice to end tenancy for unpaid rent, and where (a) the notice complies with section 52 and (b) the notice is for non-payment of rent, the director must grant an order requiring payment of the unpaid rent.

I find the 10 Day Notice complies with section 52 of the Act. The Landlord's agent testified that the Notice was issued June 7, 2023, not June 17, 2023 as provided in the Notice. This is consistent with the Tenants' application which provides that the Notice was received by them on June 7, 2023.

Based upon the evidence submitted and the Landlord's agent's testimony, I find that the Tenants did not pay rent as required by section 26(1) of the Act for the months of June, July and August, 2023 and pursuant to section 67 of the Act, the Landlord has sustained a monetary loss totaling \$6,300.00. Pursuant to sections 38 and 72 of the Act, the Landlord is ordered to retain the security and pet damage deposits in the amount of \$2,100.00 and interest thereon in partial satisfaction of the damages order, as more particularly set forth below.

The Landlord's agent did not request the \$25.00 late fee appearing on the Tenants' ledger and I find that this charge was not supported by the terms of the parties' rental agreement.

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

As the Landlord was successful in its application, I find that the Landlord is entitled to recover from the Tenants the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

The Tenants' application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act is dismissed without leave to reapply, and the tenancy has ended.

The Landlord's application for an order of possession, a monetary order for unpaid rent and reimbursement from the Tenants of the filing fee is granted.

I grant an Order of Possession to the Landlord effective **two (2) days after service of this Order** on the Tenants. Should the Tenants or any occupant on the premises fail to comply with this Order, this Order 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 **\$4,272.85** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent	\$6,300.00
Less Tenants' security and pet deposits	(\$2,100.00)
Less interest on the security and pet deposits	(\$27.15)
Reimbursement of filing fee	\$100.00
Total Amount	\$4,272.85

The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order 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: August 31, 2023

Residential Tenancy Branch