



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OPR, FFL

Introduction

The hearing occurred by conference call based on an Application for Dispute Resolution (Application) filed by the Tenant on June 20, 2023 and an Application filed by the Landlords on June 27, 2023.

The Tenant applied:

- For cancellation of the 10 Day Notice to End Tenancy

The Landlords applied:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served on June 13, 2023
- To recover the Application filing fee

The Tenant indicated that he sent a copy of his Application to the Landlords via registered mail but was unable to provide a tracking number or specific date.

The Landlords stated that they posted a copy of their Application on the Tenant's door on June 30, 2023.

Both parties acknowledged receiving the other parties Application. Both parties indicated that the packages did not include any evidence in support of their Application.

While neither party has supplied proof that service was provided to the other party in accordance with the requirements under sections 88 and 89 of the *Residential Tenancy Act* (the *Act*), I find that, based on the attendance of both parties at the hearing as well as the oral testimony of the Tenant and Landlords, service was provided.

Issue(s) to be Decided

1. Is the Tenant entitled to a cancellation of the 10 Day Notice to End Tenancy for unpaid rent?
2. Are the Landlords entitled to an Order of Possession based on the Notice?
3. Are the Landlords entitled to recover the filing fee?

Background and Evidence

As neither party supplied the other party with copies of the evidence they intended to rely on during the proceedings, I will only be considering relevant oral testimony and evidence that has been acknowledged by both parties as accurate at the time of the hearing.

Landlord J.M. testified that a 3-month fixed term residential tenancy agreement began with the Tenant on November 1, 2022 and continued on a 3-month renewal basis, the final of which began on May 1, 2023 and ended on July 31, 2023. The agreed rent was \$1,100.00 per month to be paid on the first day of each month. A security deposit of \$550.00 was paid by the Tenant to the Landlords at the start of the tenancy in November 2022.

Landlord J.M. testified that the Tenant was late paying his rent in June 2023. He stated that he text the Tenant on June 4, 5 and 6 inquiring as to the outstanding payment but received no response until June 10 at which time he was advised by the Tenant that he was unable to pay the rent.

Landlord J.M. advised that following this June 10, 2023 text conversation he posted a 10 Day Notice to End Tenancy (Notice) for unpaid rent on the Tenant's door on June 13, 2023. He stated that no rent has been received from the Tenant since this time for June, July or August 2023.

Landlord J.M. indicated that he was not seeking a Monetary Order for unpaid rent but for the \$100.00 filing fee only.

The Landlord submitted into evidence:

- A copy of the Notice
- A copy of the residential tenancy agreement for May 1 to July 31, 2023

The Tenant indicated his agreement with the testimony of the Landlords with regards to the details of the residential tenancy agreement.

The Tenant testified that he has not paid rent for June, July or August 2023 because he had a car accident and has had monetary difficulties since then.

The Tenant submitted into evidence:

- A copy of the Notice

Both parties expressed frustrations with the tenancy outside the issues brought before the hearing.

Analysis

Is the Tenant entitled to a cancellation of the Notice?

Under section 46(4) of the *Act*, a tenant who receives a notice for unpaid rent must do one of the following within 5 days of receipt of the notice:

- pay the overdue rent, in which case the notice has no effect, or
- dispute the notice by making an application for dispute resolution.

As the Landlords served the Tenant by posting the Notice on the Tenant's door on June 13, 2023, the Tenant is deemed to have received it on June 16, 2023, 3 days later as per section 90 of the *Act*. As such, the Tenant's application for dispute resolution on June 20, 2023 is in compliance with the 5 day requirements under section 46(4) of the *Act*.

Section 26 of the *Act* states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Both the Tenant and Landlords testified that the Tenant did not pay the rent as per the residential tenancy agreement for June 2023. The Tenant stated that he did not pay the rent because he was experiencing financial difficulties following a motor vehicle accident. While the Tenant may very well have been experiencing financial difficulties, he nonetheless does not dispute the fact that he did not pay the rent as required on June 1, 2023 and did not pay it within 5 days of when he was deemed to have received the Notice as required under Section 46(4) of the *Act*.

The Tenant has not met the requirements under section 26 of the *Act* which requires him to pay his rent in full and on time unless otherwise authorized under section 65 of the *Act*. His application for the cancellation of the Notice is therefore dismissed without leave to reapply.

Are the Landlords entitled to an Order of Possession based on the Notice?

Section 55 of the *Act* states that:

- (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, the director must grant to the landlord an order of possession of the rental unit if
 - a) the landlord's notice to end tenancy complies with section 52, and
 - b) the director, during the dispute resolution proceeding, dismisses the tenant's application and upholds the landlord's notice.

I find that the Notice issued by the Landlords complies with section 52 (form and content) and was served in accordance with sections 46 and 88 of the *Act*.

The Tenant's application to dispute the Notice has been dismissed.

The Landlords' application for an Order of Possession is hereby granted.

Section 55(1.1) states that:

If an application referred to in subsection (1) is in relation to a landlord's notice to end tenancy under section 46, and the circumstances referred to in subsection (1)(a) and (b) of this section apply, **the director must grant an order requiring the payment of unpaid rent.**

While the Landlords have indicated that they are not seeking a Monetary Order for the unpaid rent, as indicated above, section 55(1.1) of the *Act* requires that an order be issued under these circumstances. It will be within the Landlords discretion however, as to whether or not they chose to serve the order on the Tenant.

I hereby grant the Landlords a monetary award in the amount of \$3,300.00 for the recovery of unpaid rent for June, July and August 2023. The Landlords may keep the Tenant's security deposit per section 38(4)(b) in partial satisfaction of the outstanding rent.

Are the Landlords entitled to recover the \$100.00 filing fee?

As the Landlords were successful in their application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant an Order of Possession to the Landlords **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, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the Landlords a Monetary Order in the amount of **\$2,850.00** for the recovery of rent for June to August 2023 and for the filing fee for this application. The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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 25, 2023

Residential Tenancy Branch