



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities under sections 46 and 55 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

As the Landlord acknowledged service of the Notice of Dispute Resolution Proceeding and did not raise any concerns regarding service, the hearing proceeded as scheduled.

Service of Evidence

As the parties acknowledged receipt of each other's documentary evidence and did not raise any concerns regarding evidence, I accepted the documentary evidence before me for consideration.

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 Order for unpaid rent?

Background and Evidence

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

The Tenant has resided at the rental unit since 1998. A written tenancy agreement was not created by the parties. The Tenant's monthly rent is \$500 and is due on the first day

of each month. The Landlord does not hold a security deposit as the Tenant refinished the wooden floors of the rental unit in lieu of this.

The Tenant typically paid the rental amount in cash directly to the Landlord who would attend the rental unit on the first day of each month for this purpose. The Landlord did not provide receipts, nor were these requested. If the Landlord did not attend the rental unit on the first day of the month, the Tenant would usually visit the Landlord's residence shortly thereafter to provide payment.

The Tenant had been providing partial payments for most of the last year as he had reduced income as a result of not working. He would often pay \$300 at the start of each month, and then make additional payments later in the month. The Landlord kept a log of the payments received for this reason.

The Landlord became ill in May of this year and spent 3 months in the hospital as a result. He was discharged on August 28. During that time, the Landlord was quite sedated and did not have any contact with the Tenant. The Landlord's phone record did not indicate any contact from the Tenant.

The Tenant said that when he did not hear from the Landlord he did not know what had happened or to whom he should pay rent.

The Landlord testified that towards the end of June he asked his brother, RF, to contact the Tenant to see if he had any rent for the Landlord. No rent was obtained and so the Landlord asked his friends EJ and GB to follow up with the Tenant near the end of July.

GB testified that the Landlord contacted him near the end of July to request assistance in collecting the outstanding rent from the Tenant. On July 30 GB went to the hospital with a 10 Day Notice forms for the purpose of obtaining the Landlord's signature. On July 31st GB and EJ went to the Tenant's rental unit to provide him with the notice which they placed in the Tenant's mailbox.

GB also phoned the Tenant who he came out to discuss the matter with him. GB has known the Tenant for more than 20 years. GB said that the Tenant knows that he is one of the Landlord's best friends, and that he was there on the Landlord's behalf. GB and EJ told the Tenant that all he had to do was pay the rent to cancel the notice, and that they could accept the rent on the Landlord's behalf. They added that they would give him a receipt. The Tenant told them that he needed more time. The Tenant said he would pay all of the outstanding rent by August 19.

GB testified that approximately one hour after they left, he and EJ went to the residence of the Landlord's brother, RF. While there, the Tenant called and spoke with RF. GB

overheard this conversation and said that the Tenant again said he would pay the outstanding rent by August 19.

During their conversation at the rental unit, the Tenant had notified GB that the address on the 10 Day Notice was incorrect. For this reason, GB served a second 10 Day Notice on August 1 with the address corrected and August rent added. This was attached to the front door.

The Tenant testified that the only person who contacted him regarding payment of rent was the Landlord's brother and that this occurred sometime in early August. The Tenant claimed that he was not comfortable paying rent to someone other than the Landlord, adding that he did not know GB that well.

The Tenant agreed that he had not paid any rent for June, July, August, or September, stating that he is unable to do so as a result of financial difficulties. He added that he had a number of other expenses which also required his attention.

Analysis

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

Section 52 of the Act states that in order to be effective, a notice to end tenancy given by a landlord must:

- be in writing
- be signed and dated by the landlord giving the notice
- give the address of the rental unit
- state the effective date of the notice
- state the grounds for ending the tenancy, and
- be in the approved (Residential Tenancy Branch) form

I have reviewed the 10 Day Notice and note that it is signed and dated by the Landlord, and that it indicates that there is unpaid rent. I find that it complies with section 52 of the Act.

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).

As the amended 10 Day Notice was attached to the Tenant's door on August 1, 2023, I find that the Tenant received it on August 4, 2023. I find the tenant had until August 9, 2023, to dispute the 10 Day Notice or to pay the full amount of the arrears.

The Tenant's Application for Dispute Resolution was submitted on August 4, within the timeframe permitted.

In his application, the Tenant did not dispute that he failed to pay rent for the months of June, July, August, and September. His explanation was simply that he was unable to pay the rent as he did not have enough money to do so.

It is undisputed that the Tenant did not pay rent for June, July, August or September when it was due, nor any time after. I find that the Tenant has not provided a legal or evidentiary basis for the cancellation of the Landlord's 10 Day Notice.

For the above reasons, the tenant's 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.

Is the landlord entitled to a Monetary Order for unpaid rent?

Section 55(1.1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy under section 46 of the Act for non-payment of rent, and the application is dismissed, the Arbitrator must grant the landlord an order requiring the repayment of the unpaid rent if the notice complies with section 52 of the Act. I have already determined that the notice complies with section 52 of the Act in form and content.

Therefore, I find the landlord is entitled to a Monetary Order for unpaid rent in the amount of \$2,000.00. This amount was calculated as follows:

June rent	\$500.00
July rent	\$500.00
August rent	\$500.00
September	= <u>\$500.00</u>
	\$2,000.00

Conclusion

I grant the landlord a Monetary Order in the amount of \$2,000.00. The landlord is 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.

I grant an Order of Possession to the Landlord **effective 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.

The Tenant's application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the Act is dismissed, without leave to reapply.

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: September 20, 2023

Residential Tenancy Branch