



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, AS, OLC, OPU-DR, MNU-DR, FFL,

Introduction

- 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
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld under sections 28 and 58 of the Act
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under sections 26, 55 and 67 of the Act
- authorization to recover the filing fee for this application from the tenant under section 72 of the Act

Preliminary Matters

At the outset of the hearing the landlord sought to increase their monetary claim from \$1150.00 to \$2300.00 to reflect the tenant's failure to pay \$1150.00 in monthly rent for October 15 to November 15 of 2023, the additional month of unpaid rent waiting for this hearing.

Residential Tenancy Branch Rules of Procedure, Rule 4.2, states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I allow the amendment as this was clearly rent that the tenant would have known about and resulted since the landlord submitted the application.

Issue(s) 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 tenant entitled to an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld?

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

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

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlords provided a copy of the tenancy agreement showing monthly rent is \$1150 and due on the first day of every month. The security deposit is \$575.00. The landlords affirm that they have a verbal agreement with the client that rent will be paid on the 15th.

The landlords provided a copy of the 10 Day Notice signed September 16, 2023, with a move out date of September 28, 2023. It requests \$1150.00 in unpaid rent due on September 15, 2023.

The landlords affirm that rent for September 15 to October 15 remains unpaid and affirms that rent for October 15 to November 15 is now unpaid.

The landlords provided a copy of their bank statement dated October 23, 2023, showing e-transfer payments of \$1150.00 from the tenant on, or around, the 15th of the month from May 2023 to August 2023. There are no payments after August 15, 2023.

The landlords also requested \$45.00 for unpaid utilities and provided receipts in support of the amount and a 30 Day Demand letter for payment of said utilities dated September 16, 2023. The landlords affirm this remains unpaid.

Analysis

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

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 was duly served to the tenant on September 19, 2023, and that the tenant had until September 24, 2023, to dispute the 10 Day Notice or to pay the full amount of the arrears.

I find the unpaid rent for September 15 – October 15, and October 15 to November 15 of 2023 remains and the tenant does not have a valid reason under the Act to withhold rent.

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.

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

Therefore, I find that the landlord is entitled to an Order of Possession.

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 find that the Notice complies with section 52 of the Act.

I find the landlord is not entitled to collect unpaid utilities as unpaid rent as the 10 Day Notice did not require the payment of said utilities.

However, as the landlords have provided sufficient evidence to establish a claim for unpaid rent for September 15 – October 15, and October 15 to November 15 of 2023, I find the landlord is entitled to a Monetary Order for unpaid rent in the amount of \$2,300.

Is the tenant entitled to an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld?

As the 10 Day Notice was not cancelled and the landlord is being given an Order of Possession, this issue was not adjudicated and is dismissed, without leave to reapply.

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

As the 10 Day Notice was not cancelled and the landlord is being given an Order of Possession, this issue was not adjudicated and is dismissed, without leave to reapply.

Is the landlord entitled to recover the filing fee for this application from the tenant?

As the landlord was successful in their application, I find that the landlord is 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 landlord **effective two (2) days after service of this Order on the tenant(s)**. Should the tenant(s) 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 landlord a Monetary Order in the amount of **\$2400.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$2300.00
authorization to recover the filing fee for this application from the tenant under section 72 of the Act	\$100.00
Total Amount	\$2400.00

The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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: December 01, 2023

Residential Tenancy Branch