



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding 1811 ADANAC STREET LTD.C/O
TRIBE and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR-MT, MNDCT, OLC / OPR-DR, MNR-DR

Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Tenant requests the following:

- An order canceling a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) under section 46(4)(b) of the Act;
- A monetary order for compensation for damage or loss under the Act, *Residential Tenancy Regulation* (Regulation), or tenancy agreement under section 67 of the Act; and
- An order for the Landlord to comply with the Act, Regulation, or tenancy agreement under section 62 of the Act.

The Landlord requests the following:

- An Order of Possession after issuing the Notice under section 55(2)(b) of the Act; and
- A Monetary Order for unpaid rent and utilities under sections 26 and 67 of the Act.

Two Agents for the Landlord and an owner of the residential property attended the hearing for the Landlord. Although I waited until 9:52 AM to enable the Applicant Tenant to connect with this teleconference hearing scheduled for 9:30 AM, the Tenant did not attend.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. During the hearing, I also confirmed from the online teleconference system that the Landlord's Agents and I were the only parties who had called into this teleconference.

Rule 7.1 of the *Rules of Procedure* states that a hearing will commence at the scheduled time, unless otherwise set by the Arbitrator.

Rule 7.3 of the *Rules of Procedure* states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application with or without leave to reapply.

Accordingly, in the absence of any attendance at this hearing by the Tenant or their agent, I dismiss the Tenant's Application without leave to reapply.

Service

The Landlord's Agent testified they served the Notice of Dispute Resolution Package (Materials) and evidence on the Tenant by registered mail on February 17, 2024. The package was returned to the office of the residential property, believed to be by the Tenant after it was delivered. The Landlord's Agent confirmed receipt of the Materials and evidence for the Tenant's Application.

In light of the above evidence from the Landlord and affirmed testimony of the Landlord's Agent, I find that per section 71 of the Act, the Materials and evidence for both Applications before me were served in accordance with the Act.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession based on the Notice?
- Is the Landlord entitled to a Monetary Order for unpaid rent based on the Notice?

Background and Evidence

The attending parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The Landlord's Agents confirmed the following regarding the tenancy.

- The tenancy began on June 1, 2022.
- Rent is \$1,657.50 per month due on the first day of the month.
- A security deposit of \$812.50 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.
- The Tenant still occupies the rental unit, though has been observed moving items out of the residential property.

A copy of the Notice was entered into evidence. The Notice is on the approved form and is signed and dated February 2, 2024 and provides an effective date of February 2, 2024. The reason for ending the tenancy, per the Notice is the Tenant has failed to pay rent of \$1,657.50 due on February 1, 2024.

The Landlord's Agents testified as follows. The Tenant paid rent in cash, though was asked to pay via cheque or pre-authorized debit to avoid the security risk. The Tenant had been late paying rent frequently throughout the tenancy and reminders had been issued regarding this. The Tenant had become hostile after these reminders. Copies of previous 10 Day Notices to End Tenancy were entered into evidence by the Landlord.

Rent due on February 1, 2024 was not paid and the Notice was issued February 2, 2024 by attaching to the door of the rental unit. A witnessed Proof of Service form was entered into evidence and the Tenant confirmed receipt of the Notice on February 2, 2024 in their Application.

The Tenant has not paid any rent since the Notice was issued, and the rent due March 1, 2024 also went unpaid. The Tenant now owes \$3,315.00 in outstanding rent. The Landlord seeks an Order of Possession effective as soon as possible and Monetary Order for the outstanding rent.

Analysis

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. Section 46(1) of the Act allows landlords to end a

tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

Based on the undisputed testimony of the Landlord's Agents, which I found to be credible and corroborated by evidence, I find the Tenant did not pay rent due February 1, 2024. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent.

I accept the Landlord's undisputed testimony that the outstanding rent was not paid in full within five days of the Tenant receiving the Notice. Had this been done it would have meant the Notice has no effect in accordance with section 46(4)(a) of the Act. I also find that the Notice complies with the form and content requirements of section 52 of the Act, though the effective date is automatically amended to February 15, 2024 per section 53 of the Act. As a result, the Landlord's Application is granted.

Based on the above findings, the Landlord is entitled to an Order of Possession under section 55(1) of the Act. As the deemed effective date of the Notice has, I grant the Landlord an Order of Possession effective two days after service.

Since the Application relates to a notice to end tenancy under section 46 of the Act, the Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenant is ordered to pay \$3,315.00 in unpaid rent to the Landlord.

In accordance with the offsetting provision of section 72 of the Act, the Landlord may retain the Tenant's security deposit, plus interest, as partial satisfaction of the payment order.

Per section 4 of the Regulation, interest on security deposits is calculated at 4.5% below the prime lending rate. The amount of interest owing on the security deposit was calculated as \$20.81 using the Residential Tenancy Branch interest calculator using today's date.

Conclusion

The Tenant's Application is dismissed in its entirety, without leave to reapply.

The Landlord's Application is granted.

The Landlord is issued an Order of Possession. A copy of the Order of Possession is attached to this Decision and must be served on the Tenant. The Tenant has two days

to vacate the rental unit from the date of service or deemed service. 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. I warn that the Tenant may be liable for any costs the Landlord incurs to enforce the Order of Possession.

The Landlord is issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Tenant. It is the Landlord's obligation to serve the Monetary Order on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

| Item | Amount |
|---------------------------------------|-------------------|
| Unpaid rent | \$3,315.00 |
| Less: security deposit, plus interest | (\$833.31) |
| Total | \$2,481.69 |

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 21, 2024

Residential Tenancy Branch