



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR CNC FF
Landlord: OPR MNR FF

Introduction

This hearing was convened as a result of a cross Application for Dispute Resolution. Both parties applied for multiple remedies related to several 10 day notices and two 1 month notices, pursuant to the *Residential Tenancy Act* (the *Act*).

The Landlord and the Tenant attended the hearings. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. At the first hearing there were service issues, and the matter was adjourned to remedy those issues. Both parties confirmed receipt of each other's Notice of Dispute Resolution Proceeding documents. The Tenant confirmed receipt of the Landlord's evidence package on April 18, 2024, and did not serve any evidence of his own. No further service issues were raised, and I find both parties sufficiently served their Notice of Dispute Resolution Proceeding and the Landlord sufficiently served their evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 10 Day Notices cancelled?
 - If not, is the Landlord entitled to an Order of Possession and a monetary order?
- Is the Tenant entitled to have the Landlord's 1 Month Notices cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties provided testimony during the hearing with regards several different 10 Day Notices (for Non-payment of rent) as well as issues surrounding the different 1 Month Notices for Cause. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether or not the tenancy will continue or end. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings. Given that my decision hinges on the first 10 Day Notice, I will focus on this evidence.

The tenancy agreement provided into evidence shows that the tenancy began on February 15, 2024, and rent was set at \$2,200.00 per month, due on the 15th of the month. The Tenant was supposed to pay 40% of utilities. The Tenant agreed that rent was set at \$2,200.00 per month, but he asserts that a second tenancy agreement was signed following this agreement whereby the parties agreed that rent was due on the 1st of the month, in the amount of \$2,200.00, rather than on the 15th of the month. The Tenant had no evidence to support that a second tenancy agreement was signed, and the Landlord denied that any subsequent agreement was signed.

Both parties agree that the Landlord collected and still holds \$1,100.00 as a security deposit.

The Tenant received the first 10 day notice on March 4, 2024. It was issued because \$2,200.00 worth of rent was not paid as of February 15, 2024. A copy of this notice was provided into evidence. The Landlord stated that the Tenant has not paid any rent whatsoever since he moved in in mid-February 2024, and that he now owes \$6,600.00 as of the time of this hearing. The Tenant asserts he paid rent but had no evidence that he paid. First he said that he had rent receipts for the payments, but later stated that he was never given rent receipts. The Landlord stated they never gave receipts because rent was never paid, and they only ever received the security deposit from the Tenant.

The Tenant received the 2nd 10 day notice on or around March 17, 2024. A copy was provided into evidence, and it also listed that \$2,200.00 of rent was unpaid as of March 15, 2024.

All of the 10 Day Notices also indicate that there are unpaid utilities, but it only lists "40%" and doesn't include any actual dollar value. Given there is no dollar value listed

on this part of the Notice, I will not consider any unpaid utilities as part of unpaid rent for the purposes of this 10 Day Notice application. Any monetary amounts owing for utilities will need to be pursued separately, by way of a new application.

The Tenant asserts he paid rent for February 15-29, 2024, (half months rent), but he acknowledged that he hasn't paid any rent since. As noted above, the Tenant did not have any evidence to support his rent payment for February 15-29.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I make the following findings:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution.

First, I turn to the tenancy agreement. I note the parties agree that rent was \$2,200.00 and that a security deposit of \$1,100.00 was paid. The Tenant asserts that the parties signed a second tenancy agreement which modified the day that rent was due to the 1st of the month from the 15th of the month. The Landlord denies that any second agreement was signed, and asserts that the only signed agreement was the one provided into evidence where rent is clearly due on the 15th of the month. I have reviewed the testimony and evidence on this matter, and I find the Tenant has failed to sufficiently demonstrate that there was a second tenancy agreement that was signed, to modify the day that rent is due. I find it more likely than not that rent was due on the 15th of the month, as laid out in the initial tenancy agreement signed by the parties.

With respect to the first 10 Day Notice, issued and received on March 4, 2024, the Tenant asserts he paid rent for that period. He first asserted that he was given a receipt, but then stated he wasn't. The Landlord asserts that nothing has been paid for rent the entire tenancy. Ultimately, I found the Tenant's testimony lacked clarity and detail, and was internally inconsistent with other statements he made. I find the Landlord provided a more clear and compelling explanation about what was paid, or not paid in this case. I find it more likely than not that the Tenant failed to pay any rent during the tenancy,

either before the 10 Day notices were issued or after. I hereby dismiss the Tenants' application to cancel the first 10 Day Notice.

As the Tenants' Application is dismissed, I must now consider if the Landlord is entitled to an Order of Possession pursuant to sections 55 of the *Act*.

Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, 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 form.

I find the 10 Day Notice issued on March 4, 2024, complies with section 52 of the *Act*, in terms of the form and content requirements. As such, I find the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*. This order will be effective 2 days after it is served on the Tenant.

Next, I turn to section 55 (1.1) of the *Act*, which specifies that I must grant a monetary order for outstanding unpaid rent, provided a valid 10 Day Notice was issued, and if the Tenant's application to cancel the 10 Day Notice is dismissed.

I am satisfied that the Tenant has not paid any rent since moving in, and that he now owes \$6,600.00 in unpaid rent as of today. I find the Landlord is entitled to a monetary order for these amounts, as they remain unpaid. The Landlord is entitled to a monetary order of \$6,600.00.

Given my findings on this matter, I find it is not necessary to look at the other Notices issued by the Landlord.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenants to repay the \$100.

Conclusion

Pursuant to section 55 of the *Act*, the Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the

Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$6,700.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: April 25, 2024

Residential Tenancy Branch