



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) by both parties for:

- Tenant request for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated March 6, 2024 (10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act
- Tenant request for emergency repairs to the unit, site or property
- Landlord request for order of possession based on the 10 Day Notice
- Landlord request for unpaid rent
- Filing fee request by both parties

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary Matters

Firstly, the parties were advised that the Tenants' request for emergency repairs was being severed as it is not related to whether this tenancy is ending, which is what I find is being determined at this proceeding. Under section 59 of the Act, I exercise my discretion and dismiss the Tenants' request for emergency repairs with leave to reapply.

Secondly, the parties confirmed their email addresses during the hearing. The Landlords were advised that they are authorization to serve the Tenants by email at the email address listed on the cover page of this decision. I make this order under section 62(3) of the Act.

Issues to be Decided

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession and is the Tenant entitled to more time to cancel the Landlord's 10 Day Notice?

Is the Landlord entitled to an order for unpaid rent?

Is either party entitled to the filing fee?

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.

Evidence was provided showing that this tenancy began on January 1, 2021. Monthly rent began as \$2,400.00 and was increased as of March 1, 2023, to \$2,448.00 per month. The second rent increase was effective March 1, 2024, to \$2,533.63, which I advised the parties was not \$2,533.68 due to the Landlord's error on the final amount of rent owed listed in error on the second rent increase. Rent was always due on the first day of each month.

The Tenants confirmed that they were served with the 10 Day Notice on March 6, 2024. The Tenants did not apply to dispute the 10 Day Notice until March 14, 2024, at which time the Tenants requested additional time to make an application to dispute the 10 Day Notice. The effective date listed on the 10 Day Notice was March 16, 2024. Both parties confirmed that \$85.63 was not paid by the Tenants and has not been paid since the 10 Day Notice was issued.

The Tenants were asked why they waited until March 14, 2024, to apply to dispute the 10 Day Notice, and the Tenant agent confirmed that the Tenants did not understand the 10 Day Notice and had an issue with worker's compensation.

The Landlord is seeking an order of possession and unpaid rent, plus their filing fee.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

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 more time to cancel the Landlord's 10 Day Notice?

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 March 6, 2024, and that the Tenants had until March 11, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears. The Tenants did neither.

The Tenant has applied for dispute resolution requesting more time to cancel a notice to end tenancy. Section 66 of the Act states that the director may extend a time limit established by the Act only in exceptional circumstances. The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end tenancy beyond the effective date of the notice.

I find that not understanding the law and having an issue with worker's compensation are not exceptional circumstances and that reasonable due diligence would be to read the form which indicates that the Tenants had 5 days to either pay the rent in full or file an application to dispute the 10 Day Notice, neither of which the Tenants did.

For the above reasons, the Tenants' application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act is **dismissed, without leave to reapply.**

I am satisfied based on the testimony of the parties, that the Tenants continue to owe \$85.63 for March 2024 rent.

Is the Landlord entitled to an Order of Possession based on a Notice to End Tenancy?

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 10 Day 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, which as indicated above, I find the 10 Day Notice complies with.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent for March 2024 in the amount of **\$85.63**.

I grant the Landlord the **\$100.00** filing fee under section 72 of the Act as their application was successful. This makes the total owed by the Tenants to the Landlord by way of Monetary Order of **\$185.63**.

I decline to grant the filing fee to the Tenants as their application was dismissed.

To accommodate the Tenants and under section 62(3) of the Act, I will allow the Tenants to remain in the rental unit until May 31, 2024, **under the condition that they pay the full amount of \$2,533.63 for use and occupancy for May 2024 by midnight on May 1, 2024**. I grant the Landlord an Order of Possession under section 55 of the Act **effective 3 days after service on the Tenants** and I order that if May 2024 money for use and occupancy has been fully paid by midnight on May 1, 2024, that the Landlord may not serve the Order of Possession until May 28, 2024.

I authorize the Landlord to serve the Order of Possession by email. That email address for the Tenants is included on the cover page of this decision, under section 62(3) of the Act.

Conclusion

I grant an Order of Possession to the Landlord **effective 3 days after service 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.

As indicated above, if the Tenants pay \$2,533.63 for use and occupancy for May 2024 no later than midnight on May 1, 2024, the Landlords may not serve the Order of Possession until May 28, 2024.

I find the tenancy ends no later than May 31, 2024, at 1:00 PM, however the tenancy may end earlier if the Tenants fail to pay \$2,533.63 by May 1, 2024, as indicated above.

I grant the Landlord a Monetary Order in the amount of **\$185.63** as indicated above. The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order**. 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.

The Tenants' application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 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 Act.

Dated: April 23, 2024

Residential Tenancy Branch