



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding NIXEN & NIKO HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Introduction

This dispute relates to an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (the Act).

The Landlord applied for the following:

1. Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 7, 2024 (10 Day Notice)

The Tenant applied for the following:

1. Cancel 10 Day Notice

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

The name of the Landlord and the rental unit address were both corrected in the Tenant's application under section 64(3)(c) of the Act.

Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- Is the Landlord entitled to an order of possession?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on November 1, 2023. Monthly rent is \$1,000.00 and due on the first day of each month.

A copy of the 10 Day Notice was submitted in evidence. It is dated May 7, 2024, with an effective vacancy date of May 17, 2024. The Tenant claimed the 10 Day Notice was received on May 30, 2024. The Tenant applied to dispute the 10 Day Notice on June 1, 2024.

The Landlord testified that the Tenant has failed to pay January, February, March, April, May, June and July 2024 rent for a total of \$7,000.00. The Tenant confirmed that they did not submit any documentary evidence to support that the payments were made.

Witness NW was called and affirmed. Witness NW confirmed that the Tenant did not pay rent for January 2024 and after January 2024 they were no longer agent for the Landlord as they began work for a different company.

The Tenant was asked who they paid February 2024 rent to, and the Tenant stated SW "I believe." The Landlord was asked if SW was ever an agent who would accept rent for the Landlord, to which the Landlord denied that SW was ever authorized to accept rent on behalf of the Landlord. The Landlord stated that SW was a handyman only and did not collect rent.

The Landlord stated that the Tenant continues to owe \$7,000.00 in unpaid rent.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

Section 46 of the Act only allows the tenants 5 days to dispute the 10 Day Notice. The Tenant has the onus of proof to prove that rent was paid. The Tenant failed to provide any documentary evidence such as bank statements or Ministry receipts to support that the rent was paid for January to July 2024, inclusive. Therefore, I dismiss the Tenant's application to cancel the 10 Day Notice due to insufficient evidence.

Once the 10 Day Notice is cancelled, section 55(1.1) of the Act states that an order must be granted for the unpaid rent. Therefore, under section 55(1.1) and section 67 of the Act, I grant the Landlord **\$7,000.00** in unpaid rent as indicated above. I find the

Tenant breached section 26 of the Act, which requires that monthly rent of \$1,000.00 be paid on the first day of each month.

Order of Possession – The effective vacancy date of the 10 Day Notice has passed and the Tenant continues to occupy the rental unit. Pursuant to section 55 of the Act, I must grant the landlord an order of possession. Therefore, based on the above, I grant the landlord an order of possession effective July 9, 2024, at 1:00 PM. I find the tenancy ends on that date and time.

Conclusion

The Tenant's application is dismissed, without leave to reapply.

The Landlord's application is successful.

The Landlord has been granted an order of possession effective July 9, 2024, at 1:00 PM. The Tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The Landlord has been granted a monetary order in the amount of \$7,000.00. This order must be served on the Tenant, along with a demand letter for payment and may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced as an order of that court.

This decision will be emailed to the parties at the email addresses confirmed by the parties during the hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 2, 2024

Residential Tenancy Branch