



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding KELSON INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the Tenant: CNE, OFT

For the Landlord: OPR-DR, MNR-DR, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The Tenant applied for:

- an order cancelling the One Month Notice to End Tenancy for end of employment issued by the landlord
- an order that the tenancy has ended due to a frustrated tenancy agreement

The Landlord applied for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End the Tenancy due to Unpaid Rent served to the tenant
- recovery of the filing fee

The Landlord's agents attended the hearing and were affirmed; the Tenant did not attend.

The Landlord submitted documentary evidence and testimony showing that the Tenant was served with their Application for Dispute Resolution, evidence, and Notice of Hearing (proceeding package) by registered mail June 25, 2024. The tracking number was provided in evidence.

Based upon the Landlord's oral and written submissions, I find the Tenant was served notice of this hearing in a manner complying with section 89(1) of the Act, and the hearing proceeded on the Landlord's application in the Tenant's absence.

Preliminary and Procedural Matters

#1 –

Despite having their own hearing scheduled for 11:00 am on Monday, August 12, 2024, the Tenant failed to attend the hearing.

Rules 7.3 and 7.4 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the Tenant at the hearing, I order their application dismissed, without leave to reapply.

#2 –

The written tenancy agreement filed in evidence shows the Respondent, MS, as the only Tenant. Additionally, the Landlord listed only MS as the Tenant.

I have therefore removed the other person named on the Tenant's application as a tenant.

Additionally, the Tenant made a clerical error on their application, as they applied to dispute a One Month Notice; however, the evidence was that the Tenant received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice/10 Day Notice).

Issue(s) to be Decided

Is the Landlord entitled to an order of possession of the rental unit and recovery of the filing fee?

Background and Evidence

The Landlord submitted evidence showing the tenancy agreement began on February 1, 2021, current monthly rent at the time of the 10 Day Notice was \$1043.

Filed in evidence was a copy of the 10 Day Notice, which was dated June 6, 2024, listing an effective move-out date of June 19, 2024, and listing unpaid rent owed by the Tenant of \$583 due on June 1, 2024. The Landlord submitted evidence that the 10 Day Notice was served on June 6, 2024, when it was attached to their door.

The Landlord testified that the Tenant paid the monthly rent in three installments in June 2024, as follows: \$450 on June 5, 2024, \$450 on June 11, 2024, and \$133 on June 20, 2024. The Landlord testified that they have communicated with the Tenant, who acknowledged they understood they still owed monthly rent after the second payment.

The Landlord testified that the Tenant has paid the monthly rent for July and August 2024 and that they only seek an order of possession. The Landlord at the hearing said they were waiving the filing fee.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, meaning more likely than not, I find as follows:

Order of Possession –

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

The Notice informed the Tenant that they had five days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch (RTB) to dispute the Notice or to pay the rent in full; otherwise, the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

Although the Tenant stated in their application they received the Notice on July 18, 2024, the Tenant was not present to dispute the Landlord's evidence and testimony that they attached to the Notice to the Tenant's door on June 6, 2024, and I therefore find the Tenant was deemed to have been served the 10 Day Notice on June 9, 2024.

I find the Landlord submitted sufficient and undisputed evidence to prove that the Tenant was served a 10 Day Notice, that the Tenant owed the unpaid rent listed and did not pay the outstanding rent within five days of service.

While the Tenant filed an application for dispute resolution in dispute of the Notice, they did not attend the hearing to offer rebuttal evidence to the Landlord's evidence.

As a result, I order the tenancy ended on July 19, 2024, the effective date of the Notice served to the Tenant.

Therefore, pursuant to section 55(1) of the Act, I find that the Landlord is entitled to, and I **grant** an order of possession for the rental unit effective **at 1:00 pm on August 31, 2024**, after service of the order upon the Tenant. The effective date is in consideration that the monthly rent has been paid for August 2024.

Should the Tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The Tenant is **cautioned** that costs of such enforcement, **such as bailiff costs** and filing fees, are recoverable from the Tenant.

Conclusion

The Tenant's application is dismissed without leave to reapply due to their failure to attend the hearing to present evidence in support of their own application and to respond to the Landlord's application.

The Landlord's application for an order of possession of the rental unit has been granted in the above terms.

The Landlord is granted an order of possession effective at 1:00 pm on August 31, 2024.

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: August 12, 2024

Residential Tenancy Branch