



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

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DECISION

Dispute Codes: CNR, RR, RP, OLC

Introduction

The Tenant seeks an order cancelling a *10 Day Notice to End Tenancy for Unpaid Rent* (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (“Act”). The Tenant also sought other relief under the Act, including a request for an order to cancel a One Month Notice to End Tenancy for Cause, all of which is dismissed without leave to reapply.

Issues

1. Is the Tenant entitled to an order cancelling the Notice?
2. If not, is the Landlord entitled to an order of possession?
3. Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began November 15, 2024. Rent is \$2,450.00 and it is due on the first date of the month. There is a \$1,225.00 security deposit which the Landlord holds in trust pending the outcome of these applications. (The Tenant filed two applications for dispute resolution, but this decision will cover both of those applications.) There is a copy of the written tenancy agreement in evidence.

The Landlord served the Notice on February 2, 2025, by pre-approved email. All pages of the Notice were provided to the Tenant. The Landlord testified under affirmation that the Notice was served because the Tenant did not pay rent of \$2,450.00 that was due on February 1, 2025. Further, the Landlord testified that the Tenant has not paid any of the rent for February and has not paid the rent that was due on March 1, 2025.

The Tenant did not provide much in the way of testimony, argument, submissions, or justification as to why he has not paid rent that was due on February 1 and now March 1, 2025. And the Tenant did not otherwise dispute the Landlord's testimony that rent has not been paid on either date. Rather, he explained that he was "told to wait until the hearing" and find out the outcome of the hearing before having to recommence paying rent. The Tenant explained that his mother told him not to pay rent until after the hearing.

Both parties also testified about various matters related to the One Month Notice to End Tenancy for Cause. However, given my findings below, I will not reproduce any evidence or testimony regarding this other notice to end tenancy.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold 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*.

The Landlord's evidence, which was not disputed by the Tenant, persuades me to find on a balance of probabilities that the Tenant did not pay rent of \$2,450.00 that was due on February 1, 2025. This amount of rent is due on the first day of the month, as clearly set out in the tenancy agreement. The Tenant has also not paid any rent for March 2025.

There are several instances where a tenant might be legally permitted under the Act to withhold rent (see sections 19(2), 33(7), 43(5), 51(1.1), 51.4(2), 65(1)(b), 65(1)(f), and 72(2)(a)). However, none of these exceptions apply to the facts. Withholding payment of rent until the completion of a Residential Tenancy Branch hearing is not permitted under the Act. While the Tenant's mother's advice may have been well-meaning, it was legally incorrect.

Therefore, for these reasons, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52. As a result, the Tenant's application to cancel the Notice is dismissed without leave to reapply.

Based on the above findings, the Landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be immediately served on the Tenant. The Tenant has five (5) days to vacate the rental unit from the date of service or deemed service of the order. The order of possession is enforceable in the Supreme Court of British Columbia.

Since the application relates to a section 46 notice to end tenancy, the Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Thus, the Tenant is ordered to pay \$4,900.00 in rent to the Landlord (\$2,450.00 for February 2025 and \$2,450.00 for March 2025).

Under section 38(4)(b) of the Act, the Landlord is authorized and ordered to retain the \$1,225.00 security deposit which shall be applied against the arrears. A monetary order for the remaining amount (\$3,675.00) is attached to this Decision and must also be served by the Landlord on the Tenant. The monetary order is enforceable in the Provincial Court of British Columbia, Small Claims.

Given my findings in respect of the Notice, it is unnecessary for me to consider the facts and merits on the remaining claims for relief.

Conclusion

IT IS HEREBY ORDERED THAT:

1. The applications are dismissed without leave to reapply.
2. The Landlord is granted an order of possession with an effective date of five (5) days from the date of service upon the Tenant.
3. The Landlord is: (A) awarded compensation in the amount of \$4,900.00; (B) authorized to retain the \$1,225.00 security deposit; and (C) granted a monetary order in the amount of \$3,675.00.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: March 3, 2025

Residential Tenancy Branch