



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under section 46 of the Act
- more time to dispute the 10 Day Notice under section 66 of the Act
- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under section 47 of the Act
- more time to dispute the One Month Notice under section 66 of the Act

This hearing also dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- an Order of Possession pursuant to the 10 Day Notice and section 46 of the Act
- a monetary Order for unpaid rent under sections 26 and 67 of the Act
- recovery of the \$100.00 filing fee under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Both parties agree that they each served their Proceeding Package on the other and that both parties received the other's Proceeding Package. No issues relating to the method or timing of service were raised in the hearing. I find that the Landlords and the Tenant were each sufficiently served for the purposes of the Act, with the other's Proceeding Package, in accordance with section 71 of the Act because receipt was confirmed.

Service of Evidence

Both parties agree that they each served their evidence on the other and that both parties received the other's evidence. No issues relating to the method or timing of service were raised in the hearing. I find that the Landlords and the Tenant were each sufficiently served for the purposes of the Act, with the other's evidence, in accordance with section 71 of the Act because receipt was confirmed.

Preliminary Matters

Landlord A.R. testified that she cancelled the One Month Notice and is not seeking an Order of Possession pursuant to it. As the One Month Notice was withdrawn and is no longer effective, I find that the issue is moot. I therefore amend the Tenant's application, in accordance with section 64 of the Act, to remove the claim to dispute the One Month Notice.

Issues to be Decided

Is the Tenant entitled to more time to dispute the 10 Day Notice?

Is the Tenant entitled to cancellation of the 10 Day Notice?

Is the Landlord entitled to an Order of Possession pursuant to the 10 Day Notice?

Is the Landlord entitled to a Monetary Order for unpaid rent under sections 55(1.1) and 67 of the Act?

Is the Landlord entitled to recover the \$100.00 filing fee from the Tenant?

Background and Evidence

I have reviewed all presented evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Both parties agree that the rental property is a house containing an upper and a lower suite which are rented to the Tenant under one tenancy agreement. Evidence was provided showing that this tenancy began on January 1, 2025 with a monthly rent of \$3,356.75 due on the first day of the month. The tenancy agreement for same was entered into evidence and is signed by the Tenant and Landlords A.R. and G.E.G.R.

Both parties agree that the Tenant did not pay rent when it was due on March 1, 2025. Both parties agree that Landlord A.R. personally served the Tenant with the 10 Day Notice on March 2, 2025. The 10 Day Notice was entered into evidence, is signed by Landlord A.R., is dated March 2, 2025, gives the address of the rental unit, states that the effective date of the notice is March 15, 2025, is in the approved form, #RTB-30, and states that the Tenant failed to pay rent in the amount of \$3,356.75 that was due on March 1, 2025. Both parties agreed in the hearing that the Tenant has not paid any rent for March or April 2025.

Both parties agreed that before the current tenancy agreement was signed, the Landlords rented both units to the Tenant under separate tenancy agreements. The Tenant testified that the Landlords “made her” sign the new tenancy agreement. The Tenant did not provide any additional testimony on this claim.

The Tenant applied to dispute the 10 Day Notice on March 18, 2025. The Tenant testified that she filed late because she thought there would be a reasonable conversation between herself and the Landlords about late rent payments before legal action was taken.

Landlord A.R. testified that she and Landlord G.E.G.R. made it clear to the Tenant that no late rent would be tolerated.

Analysis

Based on the testimony of both parties I find that Landlord A.R. personally served the Tenant with the 10 Day Notice on March 2, 2025 in accordance with section 88 of the Act. The Tenant filed to dispute the 10 Day Notice on March 18, 2025. The effective date of the 10 Day Notice is March 15, 2025.

The Tenant testified that the Landlords made her sign the current tenancy agreement. Duress involves coercion of the consent or free will of the party entering into a contract. To establish duress, it is not enough to show that a contracting party took advantage of a superior bargaining position; for duress, there must be coercion of the will of the contracting party and the pressure must be exercised in an unfair, excessive or coercive manner. *Lei v. Crawford*, 2011 ONSC 349 (CanLII), (approved *Jestadt v. Performing Arts Lodge Vancouver*, 2013 BCCA 183)

In this case I am unable to find the essential elements necessary to form the defence of duress. No documentary evidence to establish duress was presented in the hearing. It

may be that to the Tenant the Landlords had the superior bargaining position, but the Tenant was free not to sign the new tenancy agreement. I find that in simply stating that the Landlords made her sign the current tenancy agreement, the Tenant has not proved that she signed it under duress.

Section 46(5) of the Act states that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution within 5 days after receiving a notice under this section, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit to which the notice relates by that date.

Based on the testimony of both parties, I find that the Tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The Tenant did not file to dispute the 10 Day Notice within five days of receiving the 10 Day Notice as required under section 46(4) of the *Act*. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

The Tenant applied for more time under section 66 of the Act to file this application for dispute resolution. Section 66(3) of the Act states that the director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

I find that I cannot extend the time limit available to the Tenant to dispute the 10 Day Notice because the Tenant failed to dispute the 10 Day Notice after the effective date of the Notice passed. The Tenant's application for more time to dispute the 10 Day Notice is therefore dismissed without leave to reapply.

As the Tenant is conclusively presumed to have accepted the end of this tenancy on the effective date of the 10 Day Notice under section 46(5) of the Act, I uphold the Notice and dismiss the Tenant's application to cancel it. As no rent has been paid for March or April 2025 I find that a 2 day Order of Possession is appropriate as a date further out is likely to result in greater damages to the Landlords. The Landlords will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit within the 2 days required, the Landlords may enforce this Order in the Supreme Court of British Columbia.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to

section 26(1) of the *Act*, I find that the Tenant was obligated to pay March 2025's monthly rent in the amount of \$3,356.75 on the first day of the month. Based on the testimony of both parties I find that the Tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlords \$3,356.75 in unpaid rent for March 2025. In accordance with section 67 of the *Act*, I grant the Landlords monetary claim for March 2025's unpaid rent.

Residential Tenancy Policy Guideline #3 states that if a tenant continues to occupy the rental unit after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the *Act*. This includes compensation for the use and occupancy of the unit or site on a per diem basis until the landlord recovers possession of the premises.

As this tenancy ended on the effective date of the 10 Day Notice, March 15, 2025 and the Tenant has not yet moved out, the Landlord is at liberty to file a claim for damages for overholding.

As the Landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the Tenant, pursuant to section 72 of the *Act*.

Conclusion

I grant the Landlord a Monetary Order in the amount of **\$3,456.75** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for compensation for unpaid rent under sections 26 and 67	\$3,356.75
authorization to recover the filing fee for this application from the Tenant under section 72 of the <i>Act</i>	\$100.00
Total Amount	\$3,456.75

The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

I grant an Order of Possession to the Landlords **effective 2 days after service of this Order on the Tenant**. Should the Tenant 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.

The Tenant's application to cancel the 10 Day Notice is dismissed, without leave to reapply.

The Tenant's application for more time to dispute the 10 Day Notice 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 14, 2025

Residential Tenancy Branch