



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR
 OPR-DR, OPRM-DR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenants’ Application for Dispute Resolution was made on December 26, 2020. The Tenants applied to cancel a 10-Day Notice for Unpaid Rent and Utilities (the “Notice”) issued December 3, 2020.

The Landlord’s Application for Dispute Resolution was made on January 14, 2021. The Landlord is requesting an order of possession to enforce a 10-Day Notice for Unpaid Rent and Utilities (the “Notice”) issued December 3, 2020, for a monetary order for unpaid rent and to recover the filing fee paid for this application.

One of the Tenants and the Tenant’s Advocate (the “Tenant”) and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters- Issue Withdrawn

During the hearing, the Landlord requested to withdraw their request for a Monetary order for outstanding rent from their application.

The Tenant did not dispute the Landlord's request to withdraw this portion of their application.

I find it appropriate to grant the Landlord's request to withdraw their application for a monetary order for unpaid rent.

I will continue in these proceedings in regard to the Notice to end tenancy that I have before me.

Issues to be Decided

- Should the Notice to End Tenancy issued December 3, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the Act?
- Is the Landlord entitled to the return of his filing fee?

Background and Evidence

The tenancy agreement records that this tenancy began on June 1, 2019. The Landlord testified that rent in the amount of \$1,518.00 is to be paid by the first day of each month, and the Landlord is holding a \$250.00 security deposit and a \$400.00 pet damage deposit for this tenancy.

The Landlord testified that there is a rent Repayment Plan in effect for this Tenancy, for \$553.00 of unpaid rent that came due during the Covid-19 effected rent period. The Landlord testified that the payment plant began on November 1, 2020, that it is spread out over eight months, in the amount of \$69.13 per month. The Landlord submitted a copy of the Repayment Plan into documentary evidence.

The Landlord testified that they served the 10-Day Notice to the Tenants on December 3, 2022, by posting a copy of the Notice to the front door of the rental unit. The 10-Day Notice recorded an effective date of December 16, 2020, and an outstanding rent amount of \$1,587.13. for the December 2020 rent. Both parties submitted a copy of the Notice into documentary evidence.

The Landlord testified that the Tenants paid the rent for December in three instalments, the first on December 5, 2020, in the amount of \$1,000.00, the second on December 16, 2020, in the amount of \$550.00, and the third on December 17, 2020, in the amount of \$40.00

The Tenant testified that they had paid the rent for December in three instalments, the first on December 5, 2020, in the amount of \$1,000.00, the second on December 16, 2020, in the amount of \$550.00, and the third on December 17, 2020, in the amount of \$40.00.

The Landlord is requesting that the Notice be enforced, as the Tenants did not pay the outstanding rent for December 2020 within five days of receiving the Notice to end tenancy, and they are requesting an order of possession of the rental unit.

Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent, a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

46 (1) *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

(4) *Within 5 days after receiving a notice under this section, the tenant may*
(a) pay the overdue rent, in which case the notice has no effect,
or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) 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.

I find that the Tenants were deemed to have received the 10-Day notice on December 6, 2020, three days after it was posted to the front door of the rental unit, pursuant to section 90 of the Act.

I accept the agreed-upon testimony of both parties that the Tenants had not paid the full outstanding rent as stated on the 10-Day Notice within the required five days after receiving this Notice. Consequently, I find that the Tenants were in breach of section 26 of the Act by not paying the rent in accordance with the tenancy agreement, and I dismiss the Tenants' application to cancel the 10-Day Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord, and the tenant's request to dispute the notice is dismissed. Section 55(1) of the *Act* states as follows:

Order of possession for the landlord

55(1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice to end the tenancy, and I find the Notice complies with section 52 of the *Act*.

Therefore, I find that the Landlord is entitled to an order of possession pursuant to section 55 of the *Act*. I grant the Landlord an **Order of Possession** effective **two days** after service on the Tenants. This order may be filed in the Supreme Court and

enforced as an order of that Court. The Tenants are cautioned that the costs of such enforcement are recoverable from the tenant.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for their application. I grant permission to the Landlord to keep \$100.00 from the security deposit they are holding for this tenancy in full satisfaction of this award.

Conclusion

I grant an **Order of Possession** to the Landlord effective **two days** after service on the Tenants. The Tenants must be served with this Order. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant permission to the Landlord to keep **\$100.00** from the security deposit for this tenancy, in full satisfaction of the amount award in this decision.

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: March 22, 2021

Residential Tenancy Branch