



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dogwood Holding Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

tenant: CNR,
landlord: OPM, FFL,

Introduction

The tenant filed the following applications for dispute resolution on the following dates:

- July 7, 2021, for a cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice #1), issued on July 5, 2021
- July 7, separately, for the same 10-Day Notice #1 of July 5, 2021
- August 9, 2021 for the 10-Day Notice #2 issued on August 3, 2021
- September 7, 2021, for the 10-Day Notice #3 issued on September 2, 2021

The landlord separately filed their application for dispute resolution on August 16, 2021. This was for an Order of Possession stemming from a mutual agreement to end the tenancy, previously signed by both parties. Additionally, the landlord seeks reimbursement for this Application filing fee.

These matters were joined together and proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on November 5, 2021. The landlord attended the hearing; however, the tenant did not attend.

Preliminary Matters

The landlord presented that they handed the notice of this hearing, associated with their own Application, in person to the tenant. That included their own prepared evidence. They handed this in person to the tenant at the rental unit, to which the tenant replied:

"I'm moving anyway." From this testimony of the landlord, I am satisfied the landlord served the tenant notice of their Application, in line with s. 89(1)(a) of the *Act*.

The landlord provided they received notice of only one of the tenant's two Applications concerning the 10-Day Notice #1. They received no prepared documentary evidence from the tenant. The only evidence provided by the tenant to the Residential Tenancy Branch were copies of the notices to end tenancy.

The tenant did not attend the hearing. I left the teleconference hearing open until 11:15am to enable the tenant to call in to this teleconference hearing scheduled for 11:00am. I confirmed that the correct call-in numbers and participant code was provided in the Notice of Hearing. I also confirmed throughout the duration of the call that the tenant was not in attendance.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to re-apply.

Issues to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the 10-Day Notice?

If the tenant is unsuccessful, is the landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to s. 55(1.1) of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

In their evidence filed in response to the tenant's Application, the landlord provided the tenancy agreement for this tenancy that started on August 1, 2019 on a month-to-month basis. The rent for the basic living space was \$450 per month. The tenant paid a security deposit of \$225.

The landlord issued the 10-Day Notice #1 on July 5, 2021 for unpaid rent. A copy of this document was attached to the tenant's Application. This set the end-of-tenancy date to July 18, 2021.

In response to the tenant's Application, the landlord also provided a document entitled Tenant Ledger Card Details, bearing the tenant's name and basic information about the tenancy. The tenant did not pay rent for the months following, making their outstanding rent amount spanning from July 2021, through to October 2021. This ledger shows \$450 for each month, equal to \$1,800 total.

The landlord issued consecutive 10-Day Notices for each of these calendar months. These appear in the landlord's evidence, issued August 3, September 2, and October 4, 2021. In the hearing, the landlord described how they attempted to discuss this briefly with the tenant, and paraphrased the tenant as stating: 'I'm not doing anything, you have to throw me out.'

Analysis

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

Following this, s. 46(4) states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the notice, or dispute it by filing an Application for Dispute Resolution.

I am satisfied that when the landlord issued the 10-Day Notice #1 the tenant owed \$450 in rent for the month of July 2021. I am satisfied the landlord issued the 10-Day Notice on July 5, 2021 and the tenant received it on that same day. My finding here is supported by the fact that the tenant applied to dispute this notice – twice – on July 7, 2021. In their Application, the tenant indicated they received this notice on July 5, 2021, posted on their door.

Because the tenant did not attend to challenge the 10-Day Notice #1, I dismiss their Application, without leave to reapply. The landlord has shown on a balance of probabilities that the tenant did not procure rent in the required timeline; therefore, that amount of rent remains unpaid.

The tenants' two applications to cancel the 10 Day Notice #1 are dismissed. The tenancy is ending. For this reason, I dismiss the tenant's subsequent Applications for each of the 10-Day Notice #2 and the 10-Day Notice #3, without leave to reapply.

Under s. 55 of the *Act*, when the tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied the document complies with the requirements under s. 52 regarding form and content, I must grant the landlord an order of possession.

I so find that the 10-Day Notice #1 complies with the requirements of form and content. The landlord is entitled to an order of possession.

Where the tenant's Application is dismissed, and the 10-Day Notice complies with the s. 52 requirements, the *Act* s. 55(1.1) provides that I must grant an order requiring the payment of the unpaid rent. Based on my review of the landlord's evidence, I grant the landlord the rent amount of \$1,800 with a Monetary Order.

Because I am issuing the Order of Possession to the landlord based on unpaid rent, I dismiss the landlord's Application based on the mutual agreement signed by the parties. The tenancy will end because of unpaid rent.

Conclusion

As the applicant tenants did not attend to present their Application, I dismiss their application for a cancellation of the 10-Day Notice #1, without leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenants fail to comply with this Order, the landlord may file this Order in the Supreme Court of British Columbia where it will be enforced as an Order of that Court.

Pursuant to s. 55(1.1) of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,800, for rent owed for July to October 2021. I provide the landlord with this Order in the above terms and the landlord must serve the tenant with **this Order** as soon as possible. Should the tenant fail to comply with this Order, the landlord may file it in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: November 8, 2021

Residential Tenancy Branch