



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Laurier House Apartments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing was convened as a result of the Tenant's Applications for Dispute Resolution, made on October 22, 2021 and December 13, 2021 (the "Applications"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 20, 2021;
- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 9, 2021 (the "10 Day Notice").
- an order granting the return of the filing fee.

The hearing was scheduled for 9:30 A.M. on March 7, 2022 as a teleconference hearing. The Landlord's Agents attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 20 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord's Agents and I were the only persons who had called into this teleconference.

Preliminary Matters

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlord's Agents and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 9:30 A.M. on March 7, 2022.

Rule 7.3 of the Rules of Procedure states that if a party 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 reapply. As neither the Tenant, nor a representative acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenant's Applications, I therefore dismiss the Tenant's Applications in their entirety without leave to reapply.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession, and an order requiring the payment of the unpaid rent, if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*. Having made the above finding, I will now turn my mind to whether the Landlord is entitled to an Order of Possession and a monetary order for unpaid rent, pursuant to section 55 of the *Act*.

The Landlord's Agents were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence 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.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 55 and 67 of the *Act*?

Background and Evidence

The Landlord's Agents testified that the tenancy began on August 1, 2003. The Tenant is required to pay rent in the amount of \$2,440.00 and an additional \$45.00 for parking, which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$918.50 which the Landlord continues to hold.

With respect to the most recent 10 Day Notice dated December 9, 2021 the Landlord's Agents testified the Tenant did not pay the full amount of rent when due for on December 1, 2021. The Landlord's Agents stated that they subsequently served the Tenant with a 10 Day Notice dated December 9, 2021 with an effective date of

December 22, 2021 by posting it to the Tenant's door on December 9, 2021. The Landlord provided a witnessed proof of service in support. Furthermore, the Tenant disputed the 10 Day Notice dated December 9, 2021 on December 13, 2021.

The Landlord's Agents testified that the 10 Day Notice indicates that the Tenant failed to pay rent in the amount of \$2,485.00. The Landlord's Agents stated that the Tenant made no payments towards this outstanding balance until December 29, 2021 at which point the Tenant paid the full outstanding balance owed to the Landlord.

The Landlord's Agents stated that while the Tenant currently does not owe any amount of unpaid rent to the Landlord, he continuously pays his rent late each month and has not paid the amount owed within the 5 days as stated on the 10 Day Notice. As such, the Landlord is seeking to end the tenancy.

Analysis

Based on the unchallenged evidence before me, the testimony, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the Act states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

The Landlord's Agents testified that they served the Tenant with a the 10 Day Notice dated December 9, 2021 with an effective vacancy date of December 22, 2021 by posting it to the Tenant's door on December 9, 2021. In accordance with Section 88 and 90 of the Act, I find the Tenant is deemed to have received the 10 Day Notice three days later, December 12, 2021.

After receiving the 10 Day Notice, the Tenant made an Application to cancel the 10 Day Notice on December 13, 2021. However, as no one attended the hearing for the Tenant, their Application to cancel the Notice is dismissed without leave to reapply.

I accept the Landlord's Agents' testimony that the Tenant did not pay the full amount of unpaid rent to the Landlord unit December 29, 2021. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, December 22, 2021, pursuant to section 46(5) of the *Act*.

According to Section 55 of the Act: (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.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

As the Landlord's Agents confirmed that the Tenant does not currently owe any amount of unpaid rent to the Landlord, I find that the Landlord is not entitled to a monetary order for unpaid rent.

Conclusion

No one attended the hearing for the Tenant. As such, the Tenant's Applications are dismissed without leave to reapply.

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

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 08, 2022

Residential Tenancy Branch