



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy signed March 6, 2023 (the “10-Day Notice”); and
- return of the filing fee pursuant to s. 72.

H.M. appeared as the Tenant. The Tenant’s advocate, L.D., spoke on the Tenant’s behalf. Z.A. appeared as the Landlord’s agent.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

I enquired with the Tenant’s advocate whether the Tenant had served his application and evidence on the Landlord. The advocate advised that she was unaware whether the Landlord had been served as there was a change over in the Tenant’s support worker.

The Landlord’s agent testified that the Landlord was not served and that she only became aware of the hearing after she received an automated email from the Residential Tenancy Branch. Despite not having been served, the Landlord’s agent advised she was prepared to proceed with the hearing.

The Landlord’s agent advised that the Tenant was served with the Landlord’s evidence by way of personal service and registered mail, both of which occurred on April 5, 2023. I am provided proof of service by the Landlord in the form of a registered mail receipt

and an email from a witness confirming personal service on April 5. The Tenant's advocate confirmed receipt of the Landlord's evidence. I find that the Landlord served its response evidence in accordance with s. 89 of the *Act*, which was received by the Tenant on April 5, 2023.

Preliminary Issue – Style of Cause

At the outset of the hearing, the Landlord's agent highlighted that the Landlord, as listed in the tenancy agreement and the 10-Day Notice, is not listed on the Tenant's application. The Tenant's application names the Landlord as Z.A.. Policy Guideline #43 provides guidance with respect to the naming of parties and specifies that the correct legal spelling of a party's name be used.

In this instance, the Landlord's agent confirmed that she is an employee of the Landlord as listed in the tenancy agreement and 10-Day Notice. I proposed amending the application to correct the issue. Neither party raised issue with me doing so. Accordingly, I amend the application pursuant to Rule 4.2 of the Rules of Procedure such that the style of cause reflects the Landlord as listed in the tenancy agreement.

Issues to be Decided

- 1) Is the 10-Day Notice enforceable?
- 2) If so, is the Landlord entitled to an order of possession and order for unpaid rent?
- 3) Is the Tenant entitled to his filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details concerning the tenancy:

- The Tenant moved into the rental unit in October 2017.
- Rent of \$714.00 is due on the first of each month.
- A security deposit of \$312.50 was paid to the Landlord.

I am provided a copy of the tenancy agreement by the Landlord.

The Landlord's agent advises that the 10-Day Notice was posted to the Tenant's door on March 6, 2023. The Tenant's advocate confirmed the Tenant received the 10-Day Notice but could not confirm the date. I find that the Landlord served the 10-Day Notice in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the 10-Day Notice on March 9, 2023.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant. Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from receiving a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. If a tenant files to dispute the notice, the burden of proving it was issued in compliance with s. 46 of the *Act* rests with the respondent landlord.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30). Though the effective date is shown as March 16, 2023, I find that this is corrected automatically to March 19, 2023 by application of s. 53 of the *Act*.

The Landlord's agent testifies that the Tenant had been served with a One-Month Notice to End Tenancy (the "One-Month Notice") in January 2023, which set an effective date of February 28, 2023. The agent tells me that the Landlord had not been served with an application disputing the One-Month Notice such that it had assumed the Tenant was vacating on February 28, 2023. I am further told by the agent that the Tenant had been paying rent by way of automatic withdrawal, which was terminated by the Landlord in February 2023 to prevent any inadvertent withdrawal of rent for March 1, 2023.

As it happened, the Tenant did file to dispute the One-Month Notice with the Landlord's submissions indicating the Tenant served that application on February 28, 2023. The file number for the separate matter is listed on the cover page of this decision.

The Landlord's agent indicates that she spoke with the Tenant on March 2, 2023 to advise him that the pre-authorized withdrawal had been terminated by the Landlord and that the Tenant was to pay rent directly. The Landlord's agent says that the

conversation of March 2, 2023, which was a Thursday, was followed up by a letter to the Tenant sent on Monday March 6, 2023, a copy of which is provided to me in the Landlord's evidence.

The Tenant's advocate says that the Tenant attended the Landlord's office on March 6, 2023 to pay rent but that the Landlord's employees refused to accept payment. I am further told by the Tenant's advocate that the Tenant attended the Landlord's office again sometime shortly after being served with the 10-Day Notice to pay rent but was again refused. Finally, the Tenant's advocate says that a family member for the Tenant emailed the Landlord's agent on March 7, 2023 enquiring why payment had been refused. I am told the Landlord's agent responded by saying she would not discuss matters concerning the Tenant with the family member without first receiving confirmation from the Tenant that she was authorized to do so.

The Landlord's agent denies that the Tenant ever attempted to pay rent and I was directed to the statement of two employees, the front desk reception and the building manager, who deny refusing payment from the Tenant. The Landlord's evidence includes emails between the agent and the employees. The Landlord's agent further advised that she circulated an email with staff that should the Tenant pay rent a receipt for use and occupancy be given. A copy of this email, dated March 2, 2023, is in the Landlord's evidence.

There is no dispute that rent for March and April 2023 has not been paid. However, the Tenant's advocate indicates that the Tenant did attend the Landlord's office on April 1, 2023 to pay rent and rent was again refused.

Based on the parties' submissions, I accept that the Tenant's failure to pay rent on March 1, 2023 was due to an administrative and communication issue. However, there is no dispute here: rent for March and April has not been paid. The Tenant received the 10-Day Notice, which ought to have put him on notice of the issue of unpaid rent. The *Act*, under s. 46(4), gave the Tenant 5 days after receiving the 10-Day Notice to pay his rent, which would have automatically cancelled the notice. This point is made clear at the top of the 10-Day Notice itself. Despite this, the Tenant did not pay rent. Instead, he filed to dispute the 10-Day Notice.

I am told that the Tenant attended the Landlord's office after receiving the 10-Day Notice, sometime in March, to pay rent but was again refused. However, this is directly contradicted by the evidence provided to me by the Landlord in which the individuals

most closely associate with receiving rent, being the reception and building manager, deny refusing the Tenant's rent payment. Further, the letter to the Tenant on March 6, 2023 shows the Landlord was accepting the Tenant's rent, but for use and occupancy only. Also, the email to staff on March 2, 2023 confirms that the Landlord would accept rent from the Tenant but that a receipt for use and occupancy was to be provided. On the evidence before me, I do not find it likely that the Landlord would have refused payment. On the contrary, it seems more likely that the Tenant did not, in fact, attend to pay rent as is alleged.

I find that the Landlord has demonstrated that the 10-Day Notice was issued in compliance with the *Act*. The Tenant's application cancelling the 10-Day Notice is dismissed without leave to reapply.

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As that is the case here, I grant the Landlord an order of possession.

Policy Guideline #54 provides guidance with respect to determining the effective date of an order of possession, which are generally effective two days after they are received by the tenant. In this instance, however, I find that it is appropriate to make the effective date of the notice April 30, 2023. I am told by the parties and accept that the Tenant has health issues. I further accept that this is a relatively long term tenancy such that the Tenant ought to be provided additional time to find alternate accommodations.

Section 55(1.1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then I must grant an order for unpaid rent. In this instance, I find that unpaid rent is \$1,428.00, representing rent for March and April 2023, and the Landlord shall receive an order for this amount.

The Landlord's agent also made mention of NSF fees and a key replacement charge. However, this is not the Landlord's application and the ability to grant a monetary award to the Landlord is limited to unpaid rent alone. Accordingly, I make no finding or order with respect to the issue of the NSF charges or the key replacement charge. Should the Landlord seek these amounts, it may file its own application to do so.

Conclusion

I dismiss the Tenant's application to cancel the 10-Day Notice without leave to reapply.

As the Tenant was unsuccessful, I find he is not entitled to his filing fee. I dismiss the Tenant's application under s. 72(1) of the *Act* for his filing fee without leave to reapply.

I grant the Landlord an order of possession pursuant to s. 55(1) of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlord by no later than **1:00 PM on April 30, 2023**.

I grant the Landlord an order for unpaid rent pursuant to s. 55(1.1) of the *Act*. The Tenant shall pay **\$1,428.00** to the Landlord.

It is the Landlord's obligation to serve these orders on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenant does not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 14, 2023

Residential Tenancy Branch