



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR

Introduction

The Tenant seeks an order pursuant to s. 46 of the *Residential Tenancy Act* (the “*Act*”) cancelling a 10-Day Notice to End Tenancy signed on March 2, 2023 (the “10-Day Notice”).

S.G. appeared as the Tenant. The Tenant had the assistance of her roommate, M.V.. F.C. 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.

M.V. and the Tenant advised that her application and evidence was served on the Landlord. The Landlord’s agent acknowledged receipt of the Notice of Dispute Resolution but denied receipt of the Tenant’s evidence. I have been provided no proof of service by the Tenant. Based on the submissions provided, I find that pursuant to s. 71(2) of the *Act* the Landlord was sufficiently served with the Notice of Dispute Resolution. The Tenant has failed to demonstrate service of her documentary evidence such that it is not included and shall not be considered by me.

The Landlord’s agent advises that the Landlord’s evidence was served on the Tenant. The Tenant acknowledges receipt of the Landlord’s evidence without objection. I find pursuant to s. 71(2) of the *Act* that the Tenant was sufficiently served with the Landlord’s evidence.

Issues to be Decided

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

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 with respect to the tenancy:

- The Tenant moved into the rental unit on December 15, 2019.
- Rent of \$1,150.00 is due on the first of each month.
- The Tenant paid a security deposit of \$575.00 to the Landlord.

I am provided with a copy of the tenancy agreement by the Landlord. The Landlord's agent advises that the owner purchased the property in early 2022 such that the tenancy predates its ownership.

The Landlord's agent advises that the 10-Day Notice was personally served on the Tenant on March 2, 2023. The Tenant acknowledges receipt of the 10-Day Notice, though says it was received on March 5, 2023. I note that the Tenant's application states that the 10-Day Notice was received on March 7, 2023 via email.

The Landlord's evidence includes a picture of the 10-Day Notice being served on an individual on March 2, 2023 as well as an email sent to the Tenant on March 2, 2023 stating to her that "[h]ere's a copy of the notice that was handed to you at [the rental unit] at 6:07 pm".

I accept the Landlord's evidence that the 10-Day Notice was personally delivered to the Tenant on March 2, 2023. The photograph, dated on the 2nd, shows it had been delivered on that date. Further, the email of March 2, 2023, sent to the Tenant, confirms it was served on the 2nd. The Tenant's evidence was inconsistent with respect to receipt of the 10-Day Notice, alternating between the 5th and the 7th, such that I prefer the evidence provided to me by the Landlord on this point, which is clear and unequivocal. I

find that the 10-Day Notice was personally served on the Tenant in accordance with s. 88 of the *Act* and received on March 2, 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.

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 been provided with a copy of the 10-Day Notice and upon its review I 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, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

Review of the information on files shows that the Tenant submitted her application on March 8, 2023 and paid her filing fee on March 10, 2023. Rule 2.6 of the Rules of Procedure establishes when an application is considered to have been made, specifying this is when the application is submitted and the filing fee paid. In this instance, that occurred on March 10, 2023. I find that the Tenant filed her application on March 10, 2023.

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. This is made clear at the very top of the 10-day notice to end tenancy, which states:

HOW TO DISPUTE THIS NOTICE

You have **5 days** to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

As the Tenant failed to file her application within 5 days of receiving the 10-Day Notice on March 2, 2023, I find that s. 46(5) of the *Act* comes into effect and the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit on the effective date. In this case, the effective date was March 15, 2023 as set out in the notice.

Given the application of the conclusive presumption, I dismiss the Tenant's application to cancel the 10-Day Notice 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.

The Tenant advised me that she and the Landlord entered into an agreement that the Landlord would agree to withdraw the 10-Day Notice if she provided some payment on the arrears. The Landlord's agent says there was a verbal agreement that the 10-Day Notice would be withdrawn if the Tenant paid \$300.00 on March 15, 2023, \$850.00 on March 29, 2023, and rent in full on April 1, 2023. The parties confirm that the only payment made was \$300.00 on March 15, 2023.

When parties come to a settlement on unpaid rent a landlord may be estopped or prevented from enforcing on the notice to end tenancy. This is so because it would be unfair to allow a landlord to go back against a settlement agreed upon by the parties and relied upon by the tenant.

In this instance, I accept that there was a verbal agreement with respect to the arrears, though prefer the evidence provided to me by the Landlord's agent. The Tenant's version of the agreement is far too vague, in my view, to be considered a reasonable settlement such that I do not find it likely the Landlord would have withdrawn the 10-Day Notice outright upon the vague promise the Tenant pay some money. As the Tenant failed to comply with the conditions, being paying of the arrears on the schedule and rent in full on April 1st, I find settlement estoppel does not apply as the Tenant did not live up to her end of the bargain.

As the Tenant's application disputing the 10-Day Notice was dismissed and the notice complies with s. 52 of the *Act*, I grant the Landlord an order of possession. The order of possession shall be effective within 2 days of being received by the Tenant.

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. Policy Guideline #3 provides guidance with respect to the application of s. 55(1.1) of the *Act*, specifying that it is limited to rent owed under the tenancy agreement and not compensation in lieu of rent owed should the Tenant be overholding.

As the conclusive presumption applies, the tenancy rightfully ended on March 15, 2023. Accordingly, unpaid rent ordered under s. 55(1.1) is limited to rent owed prior to this date. I am told by the parties that the Tenant did not pay \$1,150.00 on March 1, 2023 and paid \$300.00 on March 15, 2023. I accept that unpaid rent, excluding compensation in lieu of rent for the overholding period, totals \$850.00. The Landlord shall have an order for unpaid rent in this amount. To be clear, this order does not prevent the Landlord from seeking compensation in lieu of rent during the overholding period to which it may be entitled.

Conclusion

I dismiss the Tenant's application to cancel the 10-Day Notice 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 within **two (2) days** of receiving the order of possession.

I grant the Landlord an order for unpaid rent pursuant to s. 55(1.1) of the *Act*. The Tenant shall pay **\$850.00** 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 12, 2023

Residential Tenancy Branch