



Dispute Resolution Services

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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 January 19, 2023 (the “10-Day Notice”).

I.D. appeared as the Tenant. K.Z. and A.L. appeared as the Landlord’s agents.

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.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

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 April 1, 2021.
- Rent of \$1,624.00 is due on the first day of each month.
- The Tenant paid a security deposit of \$800.00 to the Landlord.

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.

The Landlord's agents advise that the 10-Day Notice was served on the Tenant via registered mail. The Tenant acknowledges receiving the 10-Day Notice, though cannot recall the date. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act*. The date in which it was received is irrelevant as the Tenant filed on January 23, 2023, which is within five days of the 10-Day Notice being signed.

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

The Landlord's agents advise that the Tenant has failed to pay rent as per the tenancy agreement. I am told by the agents that as of the hearing the Tenant is in arrears of rent totalling \$10,649.00. I am provided with a rent ledger by the Landlord, which the agents affirm accurately reflects the Tenant's rent payment history.

The Tenant does not dispute the accuracy of the ledger and acknowledges being in significant arrears of rent. The Tenant says that he quit his job in early 2022 to start a business, which has proven to take longer to secure investment than he had planned. The Tenant says that he can pay the arrears but needs more time to do so.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. The *Act* establishes a limited set of circumstances in which a tenant may deduct money from rent, including:

1. Where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2)).
2. The reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8)).
3. Where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)).
4. As ordered by the Director pursuant to ss. 65 and 72.

The Tenant says that he spent some \$6,000.00 replacing windows at the property. However, I have been provided no documentary evidence to support this assertion by the Tenant. Under the circumstances, I find that none of the circumstances set out above are applicable.

I find that the Landlord has established that the 10-Day Notice was issued in compliance with s. 46 of the *Act*. I dismiss the Tenant's application cancelling 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. As that is the case here, I grant the Landlord an order of possession to be effective two days after it is 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*, specifically that monetary orders under this section are limited to unpaid rent.

Review of the ledger shows that NSF charges were levied against the Tenant on various occasions. Strictly speaking, these charges are not rent as the obligation for their payment arises under a separate portion of the tenancy agreement. Accordingly, I do not grant an order for these charges as I cannot treat them as unpaid rent.

Looking at unpaid rent specifically, there is no dispute between the parties that the rent ledger provided by the Landlord is accurate. The Landlords' agent A.L. further advises that no rent has been paid since the 10-Day Notice was served, which is also confirmed by the Tenant. I am told by the parties that the Landlord retained a new management company in May or June 2022. Review of the ledger shows that a balance was carried forward from the old property manager, which upon some reconciliation of the ledger in August 2022 totalled \$800.00.

Accordingly, I find that rent has not been paid as follows:

Month	Rent Due	Rent Paid	Arrears
October 2022	\$1,624.00	\$850.25	\$773.75
November 2022	\$1,624.00	\$800.00	\$824.00
December 2022	\$1,624.00	\$1,624.00	\$1,624.00
January 2023	\$1,624.00	\$1,624.00	\$1,624.00
February 2023	\$1,624.00	\$1,624.00	\$1,624.00
March 2023	\$1,624.00	\$1,624.00	\$1,624.00
April 2023	\$1,624.00	\$1,624.00	\$1,624.00
Arrears Carried forward from Previous Manager			\$800.00
TOTAL ARREARS			\$10,517.75

I therefore order the Tenant pay \$10,517.75 to the Landlord in unpaid rent.

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*. I order that the Tenant provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order.

I grant the Landlord an order for unpaid rent pursuant to s. 55(1.1) of the *Act*. I order that the Tenant pay **\$10,517.75** 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 06, 2023

Residential Tenancy Branch