



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR-MT

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 6, 2023 (the “10-Day Notice”) and an order pursuant to s. 66 for more time to do so.

S.H. and K.B. appeared as the Landlord’s agents. The Tenant did not attend the hearing, nor did someone attend on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend the hearing for their application, it was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure. The hearing concluded at 2:44 PM without participation from the Tenant.

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 Landlord’s agents advise that they were not served by the Tenant with the application only having been provided notice of the hearing by way of email from the Residential Tenancy Branch. I discussed adjourning the application to permit the Landlord time to review and respond to the Tenant’s application. The Landlord’s agents advised they were prepared to proceed despite not having been served. Accordingly, despite the issue of service, the hearing proceeded.

I am provided with a copy of the tenancy agreement and the 10-Day Notice by the Tenant. I have included these documents into evidence and will consider them as they were provided to me by the Tenant.

Preliminary Issue – Style of Cause

At the outset of the hearing, I was advised by S.H. that the Tenant named K.B. as one of the landlords, though clarified that the Landlord is the corporate entity as listed in the tenancy agreement and the 10-Day Notice.

Policy Guideline #43 provides guidance with respect to the naming of parties, specifying the correct spelling of the parties legal names should be used. In this instance, I accept that K.B. is not the Landlord, which the tenancy agreement and 10-Day Notice note as the corporate entity. Accordingly, I amend the style of cause to correct the spelling of the Landlord's name and remove K.B. as a landlord as she is merely an employee of the Landlord.

Issues to be Decided

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

Background and Evidence

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 Landlord's agent S.H. confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit in February 2020.
- Rent of \$620.00 is currently due on the first of each month.
- The Tenant has paid a security deposit of \$300.00 to the Landlord.

I am provided with a copy of the tenancy agreement by the Tenant confirming these details.

The Landlord's agent S.H. advises that the 10-Day Notice was posted to the Tenant's door on January 6, 2023. I accept the undisputed testimony from the Landlord's agent and find that the 10-Day Notice was posted to the door 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 January 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.

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 provided to me by the Tenant 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). The 10-Day Notice lists its effective date as January 16, 2023. However, this is automatically corrected to January 19, 2023 as per s. 53 of the *Act*.

The Tenant seeks more time to dispute the One-Month Notice. Pursuant to s. 66 of the *Act*, the director may extend a time limit established under the *Act* only under exceptional circumstances. The extension cannot be granted if the application is made after the effective date in the notice has passed.

Rule 2.6 of the Rules of Procedure establishes when an application is considered to have been made, which is when the application is submitted and the filing fee paid or the fee waiver submitted. Review of the information on file shows the Tenant filed their application on January 25, 2023. In other words, the Tenant failed to file her application before the effective date of the notice. Therefore, I dismiss her application for more time under s. 66 of the *Act* without leave to reapply as such an order is prohibited by s. 66(3).

As the Tenant failed to file on time, I find that s. 46(5) 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. Accordingly, the Tenant's application to cancel 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 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 on the application of s. 55(1.1) of the *Act*, specifying its application is limited to unpaid rent and does not include compensation in lieu of rent should the Tenant fail to dispute in time and overhold on the rental unit.

In this instance, the tenancy ended on January 19, 2023, which is the effective date of the 10-Day Notice. Accordingly, I cannot grant an order for compensation in lieu of rent for the period after January 19, 2023 given the guidance in Policy Guideline #3. I am told by the Landlord's agents that the Tenant failed to pay rent in full had had a rolling deficit such that \$359.00 was owed as of January 1, 2023. I accept the undisputed evidence of the Landlord that unpaid rent total \$359.00 and it shall receive an order for that amount.

Conclusion

The Tenant's application for more time to dispute the 10-Day Notice is dismissed without leave to reapply.

The Tenant's application to cancel the 10-Day Notice is dismissed 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 of possession.

I grant the Landlord an order for unpaid rent pursuant to s. 55(1.1) of the *Act*. I order that the Tenant pay **\$359.00** to the Landlord representing unpaid rent prior to January 19, 2023, which is the date the tenancy ended.

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 13, 2023

Residential Tenancy Branch