



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR

Introduction

The Tenants 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 31, 2023 (the “10-Day Notice”).

C.F. appeared as the Landlord’s agent and was joined by M.M. who provided evidence with respect to service of the documents.

The Tenants 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 Tenants did not attend the hearing, it was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

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 agent acknowledges receipt of the Notice of Dispute Resolution from the Tenants.

M.M. advised that the Tenants were served with the Landlord’s response evidence by posting it to the rental unit door on April 6, 2023. I find that the Landlord’s evidence was served in accordance with s. 88 of the *Act* and deem that they received it on April 9, 2023 as per s. 90 of the *Act*.

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?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

The Landlord's agent confirms the following aspects with respect to the tenancy:

- The Tenants moved into the rental unit on August 15, 2019.
- Monthly rent of \$995.00 is due on the first of each month.
- The Tenants paid a security deposit of \$497.50 to the Landlord.

I am provided with a copy of the tenancy agreement by the Landlord, which shows rent is due on the 15th of each month. According to the Landlord's agent, this was due to the mid-month start to the tenancy but that from September 1, 2019 onwards, rent was due on the first.

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.

M.M. advises that the Tenants were each served with the 10-Day Notice by way of registered mail sent on January 31, 2023. I accept the Landlord's undisputed evidence that the 10-Day Notice was served on both Tenants as mentioned. I find that this was done in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenants received the 10-Day Notice on February 5, 2023.

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 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 effective date of the notice is incorrect, though it is corrected automatically to February 15, 2023 by application of s. 53 of the *Act*.

Review of the information on file shows the Tenants filed their application disputing the 10-Day Notice on February 16, 2023. I find that the Tenants failed to file their application within 5 days of receiving the 10-Day Notice as required under s. 46(4) of the *Act*. Accordingly, I find that s. 46(5) of the *Act* applies such that the Tenants are conclusively presumed to have accepted the end of the tenancy and ought to have vacated the rental unit on the effective date of the 10-Day Notice.

Given that the Tenants are conclusively presumed to have accepted the 10-Day Notice, I dismiss their application disputing the 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. The Tenants shall provide vacant possession of the rental unit within two days of receiving the order of possession.

Pursuant to s. 55(1.1) of the *Act*, if 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 the Director must grant an order for unpaid rent. In accordance with Policy Guideline 3, an order for unpaid rent is limited to rent owed during the tenancy and does not include compensation for an overholding tenant.

Where a tenant is conclusively presumed to have accepted the end of the tenancy pursuant to s. 46(5) of the *Act*, the tenancy ends on the effective date in the notice to end tenancy. In this case, that is February 15, 2023. Only rent owed up until this point constitutes unpaid rent and I cannot order compensation in lieu of rent from tenant that is overholding. The Landlord must file a separate application for that relief.

The Landlord provides a rent ledger which its agent confirms is an accurate reflection of rent receipts. Based on the ledger, as of January 1, 2023 the Tenants were in arrears of \$3,935.00 and made two payments in January totalling \$1,550.00 such that total arrears on January 31, 2023 was \$2,385.00. The ledger also shows the Tenants did not pay rent for February 2023 other than a \$150.00 payment. The Landlord's agent further confirms that the Tenants made the following payments in March 2023: \$150.00,

\$1,600.00, and \$300.00. No other payments were made according to the Landlord's evidence.

I accept the Landlord's undisputed evidence and find that the Tenants were in arrears of rent of \$3,230.00 (\$2,385.00 + \$995.00 - \$150.00) on February 15, 2023, which is the effective date of the 10-Day Notice. I make no findings on whether rent was due on the 1st or 15th as it is unnecessary to do so since the Tenants' rent obligation for February 2023 was triggered regardless of when rent was due.

Taking into account the subsequent payments from March 2023, I find that the Landlord has established an unpaid rent claim of \$1,180.00 (\$3,230.00 - \$150.00 - \$300.00 - \$1,600.00). To be clear, this does not include any claim for compensation in lieu of rent for the months of March and April 2023 during the overholding period. The Landlord is at liberty to seek this compensation but must do so by filing its own application.

Conclusion

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

The Landlord is entitled to an order of possession under s. 55(1) of the *Act*. The Tenants shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

The Landlord is entitled to an order for unpaid rent under s. 55(1.1) of the *Act*. The Tenants shall pay **\$1,180.00** in unpaid rent to the Landlord.

It is the Landlord's obligation to serve these orders on the Tenants. If the Tenants do 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 Tenants do 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 27, 2023

Residential Tenancy Branch