



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Code CNR

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), issued pursuant to section 46.

Respondent DR (the landlord) called into this teleconference at the date and time set for the hearing of this matter. Although I waited until 11:19 A.M. to enable the applicant (tenant) to connect with this teleconference hearing scheduled for 11:00 A.M., the applicant did not attend. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only persons who had called into this teleconference.

I note that sections 55 (1) and (1.1) of the Act require that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord under section 46 of the Act, I must consider if the landlord is entitled to an order of possession and monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Preliminary Issue – Service

The landlord confirmed receipt of the notice of hearing via email from the tenant and that she had enough time to review it.

Based on the landlord's convincing testimony, I find the tenant served the notice of hearing in accordance with section 89(1) of the Act.

The landlord attached her response evidence to the tenant's front door on April 02, 2023. The landlord submitted a witnessed proof of service form (RTB 55) indicating that on April 02, 2023 the landlord attached the response evidence to the tenant's front door. The landlord observed the package was removed from the door on the same day.

Section 71(2)(c) of the Act states:

In addition to the authority under subsection (1), the director may make any of the following orders:

[...]

(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

Based on the landlord's convincing testimony and the witnessed proof of service form, I find the landlord sufficiently served the response evidence on April 02, 2023, in accordance with section 71(2)(c) of the Act. I deem the tenant received the response evidence on April 05, 2023, per section 90(c) of the Act.

Issues to be Decided

Is the tenant entitled to an order for the cancellation of the Notice?

If the tenant's application is dismissed, is the landlord entitled to an order of possession and a monetary order?

Background and Evidence

While I have turned my mind to the evidence of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the Notice.

The landlord affirmed the tenancy started on September 01, 2022. Monthly rent is \$1,390.00, due on the first day of the month. The landlord collected a security deposit (the deposit) in the amount of \$650.00 at the outset of the tenancy and currently holds it in trust. The tenancy agreement was submitted into evidence.

The landlord stated that monthly rent includes a flat rate of \$90.00 for the utilities.

The landlord testified that the tenant paid \$300.00 for rent due on December 01, 2022. The tenant did not pay the balance of rent due on December 01, 2022 in the amount of \$1,090.00.

The landlord attached the Notice to the tenant's front door on December 02, 2022. The landlord submitted a photograph of the Notice attached to the tenant's front door.

The landlord submitted a copy of the December 02, 2022 Notice into evidence. It indicates the tenant did not pay rent in the amount of \$1,300.00, due on December 01, 2022. The effective date is December 12, 2022. The tenant disputed the Notice on December 10, 2022 and continues to occupy the rental unit.

The tenant's application indicates the tenant received the Notice on December 02, 2022.

The landlord said the tenant has not paid the balance of December 2022 rent in the amount of \$1,090.00 and did not pay rent in January, February, March and April 2023 (\$1,390.00 per month x 4 months). The tenant's current rental arrears are \$6,650.00.

The landlord submitted an affidavit dated March 28, 2023 (the affidavit). It states:

19. On December 1, 2022, I cashed the cheque I received from the CMHA in the amount of \$300 for "rent subsidy for [tenant]" as I expected to receive via eTransfer the balance (\$1090) owed by the Tenant on December 1, 2022 for the rent amount and utilities portion amount. When that did not occur, I issued the Notice on December 2, 2022, which is the subject of this Hearing.

[...]

21. The Tenant also has not paid any amount for use and occupancy or the utilities portion amount for January 1, 2023, February 1, 2023, March 1, 2023 or presumed for April 1, 2023, prior to this Hearing.

Analysis

Based on the landlord's convincing testimony and the photograph, I find the landlord served the Notice by attaching it to the tenant's front door on December 02, 2022, in accordance with section 88(g) of the Act.

I find the tenant received the Notice on December 02, 2022, as the tenant's application states the tenant received it on that date.

Section 26(1) of the Act states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Sections 46(4) and (5) of the Act state:

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Section 46(5) of the Act is mandatory, and I do not have discretion as to its application. I find the tenant did not submit an application to dispute Notice within the timeframe of section 46(4) of the Act, as the tenant received the Notice on December 02, 2022 and applied for dispute resolution on December 10, 2022.

Pursuant to section 46(1) of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Based on the landlord's convincing undisputed testimony and the affidavit, I find the tenant did not pay the amount of \$1,090.00 for rent due on December 01, 2022 and did not pay rent in January, February, March and April 2023.

I find the form and content of the Notice complies with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the ground to end tenancy and it is in the approved form.

Based on the above, as the tenant received the Notice, did not dispute it within the legal timeframe and did not pay rent, I dismiss the tenant's application to cancel the Notice.

As the tenant is currently occupying the rental unit, I find the tenancy ends on the date of this decision, per section 44(1)(f) of the Act.

Pursuant to section 55(1) of the Act, I award the landlord an order of possession.

Per sections 26 and 55(1.1), I award the landlord \$6,650.00 for the balance of December 2022 rent and January, February, March and April 2023 rent.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$650.00 deposit in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Unpaid rent – balance of December 2022 (\$1,390.00 minus \$300.00)	1,090.00
Unpaid rent – January to April 2023 (4 months x \$1,390.00)	5,560.00
Subtotal:	6,650.00
Deposit	650.00 (minus)
Total:	6,000.00

Conclusion

Pursuant to section 55(1) of the Act, I grant an order of possession to the landlord effective two days after service of this order on the tenant. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the British Columbia Supreme Court.

Pursuant to sections 26, 55(1.1) and 72 of the Act, I authorize the landlord to retain the \$650.00 deposit and award the landlord \$6,000.00. The landlord is provided with this order in the above terms and the tenant must be served with this order. Should the

tenant fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court 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 24, 2023

Residential Tenancy Branch