



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT
 CNR

Introduction

This was a cross application hearing that dealt with the tenant's applications for dispute resolution. The tenant's first application for dispute resolution (the "First Application") was made pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy, pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant's second application for dispute resolution (the "Second Application") was made pursuant to the *Act* for:

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46; and

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed their email addresses for service of this decision and order.

Preliminary Issue- Service

Both parties agree that the landlord was served with the Notice of Dispute Resolution Proceeding packages for both applications for dispute resolution.

Both parties agree that the tenant's evidence pertaining to the First Application was served with the First Application. I find that the tenant's evidence pertaining to the First Application was served in accordance with section 88 of the *Act*.

The tenant testified that the evidence pertaining to the Second Application was served on the landlord with the Second Application. The agent testified that tenant's evidence was not included in that package. The agent testified that the Second Application was served via email. The tenant did not enter into evidence any proof of service documents. I find that the tenant has not proved, on a balance of probabilities that the landlord was served with his evidence for the Second Application. The tenant's evidence pertaining to the Second Application is excluded from consideration.

Both parties agree that the agent served the tenant with the landlord's responding evidence for both applications via registered mail. The agent entered into evidence a registered mail receipt dated October 4, 2023. I find that the landlord's evidence was served on the tenant in accordance with section 88 of the Act.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy?
2. Is the landlord entitled to an Order of Possession pursuant to the One Month Notice to End Tenancy?
3. Is the tenant entitled to recover the filing fee for the First application from the landlord?
4. Is the tenant entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent?
5. Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts:

- This tenancy began on June 1, 2019
- monthly rent in the amount of \$1,171.00 is payable on the first day of each month,
- a security deposit of \$616.50 was paid by the tenant to the landlord.

A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that a One Month Notice to End Tenancy for Cause (the "One Month Notice") was posted on the tenant's door on June 23, 2023. The tenant testified that he received the One Month Notice on June 23, 2023. The One Month Notice was entered into evidence, is signed by the landlord, is dated June 23, 2023, gives the address of the rental unit, states that the effect date of the notice is July 31, 2023, is in the approved form, #RTB-33, and states the following grounds for ending the tenancy:

- Tenant is repeatedly late paying rent.

Both parties agree that the tenant was late paying rent for the following months:

- December 2022
- January 2023
- February 2023
- March 2023
- April 2023
- June 2023

The tenant filed to dispute the One Month Notice on June 30, 2023.

The agent testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") was posted on the tenant's door on September 7, 2023. The tenant testified that he received it on September 7, 2023. The 10 Day Notice was entered into evidence, is signed by the landlord, is dated September 7, 2023, gives the address of the rental unit, states that the effect date of the notice is Sept 21, 2023, is in the approved form, #RTB-30, and states the following grounds for ending the tenancy:

- The tenant failed to pay rent in the amount of \$1,171.00 due on September 1, 2023.

Both parties agree that the tenant did not pay any rent for September or October 2023. The tenant filed to dispute the 10 Day Notice on September 13, 2023.

The tenant testified that all of his troubles with the rent started in September of 2022 when he was hospitalized for approximately one month. The tenant entered into evidence proof of his hospitalization in September of 2022. The tenant testified that during this time he was the victim of fraud and his bank account was shut down. The tenant testified that he paid his rent late because he had to personally go into the bank

to send his rent money to the landlord but he was too sick to do so. The tenant did not submit any documentary evidence to establish that he was the victim of fraud. The tenant did not submit any documentary evidence proving that he must attend his banking institution in person to pay the rent.

The tenant testified that he has been too sick to go to the bank to pay his rent for September and October of 2023. The tenant testified that he is currently hospitalized and has been for 6 or 7 days. The tenant did not submit into evidence documentary proof, such as a letter from a doctor or a medical legal report that states that the tenant's medical condition has prevented him from attending his bank to pay the rent.

Analysis

Based on the testimony of both parties, I find that the tenant was served with the 10 Day Notice on September 7, 2023 in accordance with section 88 of the Act. Upon review of the 10 Day Notice I find that it meets the form and content requirements of section 52 of the Act.

Based on the undisputed testimony of both parties, I find that the tenant failed to pay the outstanding rent stated on the 10 Day Notice within five days of receiving the 10 Day Notice. The tenant failed to dispute the 10 Day Notice six days after receiving it. I find that the tenant has not made application to dispute the 10 Day Notice pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice, September 21, 2023. In this case, this required the tenant to vacate the premises by September 21, 2023. As the tenant has not vacated the subject rental property, I find that the landlord is entitled to a 2-day Order of Possession. I uphold the 10 Day Notice and dismiss the tenant's application to cancel it.

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I find that the tenant has not proved that he can only pay rent by physically attending his banking institution as no documents supporting this testimony were entered into evidence. I find that the tenant has not proved that he was too ill to attend at his banking

institution to pay his rent as no medical documents stating same were entered into evidence. The tenant was obligated to pay his rent on time under section 26 of the Act and failed to do so.

Under section 55(1.1) of the Act, the director must grant a landlord an order requiring the tenant to pay the unpaid rent if the following conditions are met:

- the tenant has disputed a notice to end tenancy issued by the landlord for unpaid rent under section 46 of the RTA (section 39 of the MHPTA);
- the notice to end tenancy complies with section 52 of the RTA (section 45 of the MHPTA); and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

This provision allows a landlord to obtain a monetary order for unpaid rent without having to file their own application. Under the legislation, the requirement to pay rent flows from the tenancy agreement. Unpaid rent is money that is due and owing during the tenancy.

Compensation for overholding under section 57 of the Act is not considered rent since overholding only occurs after a tenancy has ended. If a landlord is seeking such compensation, they must make a separate application for dispute resolution and give proper notice to the tenant in accordance with the provisions of the legislation. I am not able to make an order for this type of compensation under section 55(1.1) of the Act.

As I have determined that this tenancy ended on September 21, 2023, I find that the landlord is entitled to a per diem monetary award from September 1-21, 2023 in the amount of \$819.63. The landlord is at liberty to file an application for dispute resolution against the tenant for damages for overholding.

As I have determined that this tenancy ended by way of the 10 Day Notice, I decline to consider if it would also have ended pursuant to the One Month Notice. The tenant's application to cancel the One Month Notice is dismissed without leave to reapply.

Conclusion

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

I issue a Monetary Order to the landlord in the amount of \$819.63.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. 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: October 23, 2023

Residential Tenancy Branch