



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, CNR, LRE, LAT

### Introduction

This hearing dealt with the tenant's application and amendments, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated May 4, 2021 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62;
- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 2, 2021 ("first 10 Day Notice"), pursuant to section 46;
- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 4, 2021 ("second 10 Day Notice"), pursuant to section 46;
- an order restricting the landlord's right to enter the unit, pursuant to section 70;
- authorization to change the locks to the unit, pursuant to section 70.

The tenant did not attend this hearing, which lasted approximately 13 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he owns the rental unit.

This hearing began at 1:30 p.m. and ended at 1:43 p.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only people who called into this teleconference.

At the outset of this hearing, I informed the landlord that Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recording of this hearing by anyone. The landlord affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlord and informed him that I could not provide legal advice to him. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests. He confirmed that he was ready to proceed with the hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and amendments. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and amendments.

The landlord testified that he served the tenant with the landlord's first 10 Day Notice on June 2, 2021, and second 10 Day Notice on August 4, 2021, both by posting to the tenant's rental unit door. He confirmed that the first 10 Day Notice indicates an effective move-out date of June 12, 2021, and the second 10 Day Notice indicates an effective move-out date of August 14, 2021. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's first 10 Day Notice on June 5, 2021, and second 10 Day Notice on August 7, 2021, three days after their postings.

The tenant indicated that she received both 10 Day Notices in this application and amendments, when she applied to cancel the two notices.

#### Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the RTB *Rules* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any evidence or submissions from the tenant, I order the tenant's entire application dismissed without leave to reapply. I informed the landlord of my decision verbally during this hearing.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel two 10 Day Notices, the landlord is entitled to an order of possession if the notices meet the requirements of section 52 of the *Act*.

The landlord confirmed that he already took back possession of the rental unit and changed the locks on the day of this hearing, September 21, 2021. He said that he did not require an order of possession against the tenant. Therefore, I did not issue an order of possession to the landlord.

### Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

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

The landlord testified regarding the following facts. This tenancy began on May 4, 2020 and ended at the end of July 2021. Monthly rent in the amount of \$1,500.00 was payable on the first day of each month. A security deposit of \$700.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties.

The landlord confirmed that the 10 Day Notices were issued to the tenant for unpaid rent of \$1,500.00 for each month. He stated that the tenant failed to pay rent of \$1,500.00 for each month from August to September 2021, totalling \$3,000.00. The landlord seeks a monetary order of \$3,000.00 for unpaid rent from the tenant.

### Analysis

Section 55(1.1) of the *Act* states the following:

*55(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.*

Effective on March 25, 2021, the landlord is entitled to a monetary order for unpaid rent without filing a separate application. The tenant filed this application on May 14, 2021. As noted above, the tenant's application to cancel both 10 Day Notices was dismissed without leave to reapply. I find that the landlord's two 10 Day Notices comply with section 52 of the *Act* and I have upheld those notices.

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$1,500.00 for each month from August to September 2021. Therefore, I find that the landlord is entitled to \$3,000.00 in rental arrears from the tenant.

The landlord continues to hold the tenant's security deposit of \$700.00. No interest is payable on the deposit over the period of this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's entire security deposit of \$700.00, in partial satisfaction of the monetary award. I issue a monetary order in the landlord's favour for the balance of \$2,300.00.

### Conclusion

The tenant's entire application is dismissed without leave to reapply.

The landlord is not issued an order of possession against the tenant.

I order the landlord to retain the tenant's entire security deposit of \$700.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$2,300.00 against the tenant. 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: September 21, 2021

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Residential Tenancy Branch