



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties	File No.	Codes:
Tenant	910037335, 910038348, 910038992, 110038993,	CNR
Landlord	110038929	OPR-DR, MNR-DR, FFL

The Tenant made multiple Applications for orders to cancel multiple 10 Day Notices to End Tenancy for Unpaid Rent.

The Landlord made a direct request for an order of possession for unpaid rent, further to having served 10 Day Notices to End Tenancy for Unpaid Rent.

The 10 Day Notice was signed and dated May 14, 2021, it has the rental unit address, it was served via email to an email address the Tenant had provided, on May 14, 2021, with an effective vacancy date of May 24, 2021, and it was served on the grounds that the Tenant failed to pay \$795.00 when it was due on May 1, 2021.

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenants filed a claim:

- disputing the validity of a 10 Day Notice dated May 4, 2021.

The Landlord filed a claim:

- for an order of possession for unpaid rent, further to having served a 10 Day Notice dated May 4, 2021;
- for a monetary order of \$795.00 for outstanding unpaid rent from the Tenants; and recovery of the \$100.00 application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony, but no one attended on behalf of the Tenants. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about it. During the hearing the Landlord was given the opportunity to provide their evidence orally and respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

The Tenants were provided with copies of the Notices of a Dispute Resolution Hearing on May 20, 2021, May 28, 2021 at 7:34 a.m., May 28, 2021 at 7:29 a.m., and May 28, 2021 at 7:39 a.m.; however, the Tenant did not attend the teleconference hearing scheduled for September 17, 2021 at 9:30 a.m. (Pacific Time). The phone line remained open for over 25 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed.

Rule 7.1 of the Residential Tenancy Branch Rules of Procedure (“Rules”) states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Landlord and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 9:30 a.m. on September 17, 2021, as scheduled.

Rule 7.3 states that 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 reapply. The teleconference line remained open for over 25 minutes, however, neither the Tenant nor an agent acting on her behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I **dismiss the Tenants’ Applications without leave to reapply.**

Preliminary and Procedural Matters

The Parties provided their email addresses in their respective Applications and the Landlord confirmed her address in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Landlord that she is not allowed to record the hearing and she confirmed that she was not recording it.

The Landlord said that the Tenants moved out by approximately July 15, 2021; therefore, she no longer seeks an order of possession for the rental unit.

The Landlord applied for dispute resolution before the end of the tenancy, and before she knew how much the Tenants would pay before they moved out. The Landlord applied for the amount owing at that time; however, she said the amount owing is now up to \$2,590.00, as the Tenants had not paid any rent since paying for arrears in May 2021. The Landlord requested that her Application for a monetary order be increased to \$2,590.00, to reflect the changing amount of this debt.

Pursuant to Rule 4.2 and section 64(3)(c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenants to pay their monthly rent owing. I find no prejudice to the Tenants, as they are aware of how much rent they have not paid, so they could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after amending the Landlord's original amount claimed, I find it reasonable to amend the amount of unpaid rent sought by the Landlord from the Tenant from \$795.00 to \$2,590.00.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The tenancy began when the Tenants moved in on January 25, 2020. The Landlord confirmed that the tenancy agreement required the Tenants to pay her a monthly rent of \$1,595.00 due on the first day of each month; however, the Landlord said that the Tenants repeatedly had difficulty paying on time, therefore, she said they agreed to start

paying on the 15th of the Month for the last couple years. The Landlord confirmed that the Tenants paid her a security deposit of \$795.00, and no pet damage deposit.

The Landlord said that the Tenants paid \$600.00 rent for March 2021 in early April 2021. That left \$995.00 owing for that month. The Landlord said that the Tenants paid her \$800.00 of the rent owing on April 15, 2021, which left \$795.00 owing.

The Landlord said that at the end of May 2021, the Tenant paid her \$795.00, but that this was the last payment the Landlord received from the Tenants before they vacated the rental unit on approximately July 15, 2021.

Date Rent Due	Amt Owing	Amt Received	Date Received	Amt. Owing
March 15/21	\$1,595.00	\$600.00	April 1/21	\$995.00
April 15/21	\$1,595.00	\$800.00	May 4/21	\$795.00
May 15/21	\$1,595.00	\$795.00	End May	\$800.00
	TOTAL OWING			\$2,590.00

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Based on the evidence and authorities before me, I find that the Landlord is successful in her Application, as I find that the Tenants breached section 26 of the Act by not paying the rent owing to the Landlord as set out above. Accordingly, I grant the Landlord a monetary award of **\$2,590.00** in unpaid rent, pursuant to section 67 of the Act. I also award the Landlord recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants’ \$795.00 security deposit in partial satisfaction of the Landlord’s monetary award. The Landlord is authorized to retain the Tenants’ security deposit, and

I grant her a Monetary Order of **\$1,895.00** against the Tenants for recovery of the remaining amount of the award.

Conclusion

The Landlord's Application for recovery of unpaid rent is successful in the amount of **\$2,590.00**. Further, the Landlord is awarded recovery of the **\$100.00** filing fee for this Application from the Tenants for a total of **\$2,690.00**.

The Tenants' applications to cancel the 10 Day Notices are dismissed without leave to reapply, since they have already moved out of the rental unit, and because they did not attend the hearing to present the merits of their applications.

The Landlord is authorized to keep the Tenants' security deposit of \$795.00 in partial satisfaction of the Landlord's monetary award. I grant the Landlord a Monetary Order under section 67 of the Act from the Tenants of **\$1,895.00** for the remainder of the monetary award owed by the Tenants to the Landlord.

This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 17, 2021

Residential Tenancy Branch