



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR**

Introduction

This hearing was convened as a result of the Tenant's application for cancellation of a 10 Day Notice dated July 6, 2021 ("10 Day Notice") pursuant to section 46 of the Residential Tenancy Act ("Act").

The Landlord, represented by its two agents ("TG" and "JB") and the Tenant attended the participatory hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant testified he served the Notice of Dispute Resolution Proceeding ("NODR") on the Landlord by email but the Tenant could not recall the date he emailed it. TG acknowledged the Landlord had received the NODR from the Tenant by email. I find that the NODR was sufficiently served on the Landlord pursuant to section 71(2)(b) of the Act.

AK testified the Tenant was served with the Landlord's evidence by registered mail on October 25, 2021. AK submitted the tracking number for service of this evidence on the Tenant. I find the Tenant was served with the Landlord's evidence pursuant to section 88 of the Act.

Preliminary Matter – Misspelling of Landlord's Name

TG stated that, in the application for dispute resolution, the Tenant had misspelled the corporate name of the Landlord. TG referred me to the 10 Day Notice for the correct spelling of the Landlord's name and requested that I amend the Tenant's application to correct this error.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* states (“RoP”):

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

As the Landlord’s request could reasonably be anticipated by the Tenant, I amended the Tenant’s application to correct the Landlord’s corporate name.

Preliminary Matter - Amendment of Landlord’s Monetary Claim

At the hearing the Landlord sought to amend his application to include a claim for an additional month of rent for October 2021 for a total of \$3,450.00 for rent he testified remains outstanding. In this case, the Landlord is seeking compensation for unpaid rent that has increased since he first applied for dispute resolution. I find that the increase in the Landlord’s monetary claim should have been reasonably anticipated by the Tenant. Therefore, pursuant to Rule 4.2 of the RoP, I order that the Landlord’s application be amended to include a claim for October 2021 rent for a total of \$3,450.00.

Issues to be Decided

- Is the Tenant entitled to cancellation of the 10 Day Notice?
- If the Tenant fails in his application to cancel the 10 Day Notice, is the Landlord entitled to an Order of Possession?
- If the Tenant fails in his application to cancel the 10 Day Notice, is the Landlord entitled to recover unpaid rent owing by the Tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties’ claims and my findings are set out below.

The parties entered into a written month-to-month tenancy commencing on February 1, 2020 with rent at \$1,725.00 payable on the 1st of each month. The Tenant was required to pay a security deposit of \$862.50 and a pet damage deposit of \$862.50. TG stated the Tenant paid the security and pet damage deposits and that the Landlord still retains the deposits in trust for the Tenant.

TG testified the Landlord served the Tenant with the 10 Day Notice by registered mail on July 6, 2021. TG submitted a Proof of Service on Form RTB-34 together with the tracking number for the registered mail. I find that the 10 Day Notice was served on of the Tenant in accordance with section 88 of the Act. TG testified that, as of the date of the 10 Day Notice, the Tenant owed \$1,725.00 for rental arrears.

TG testified that Landlord served the Tenant with another 10 Day Notice to End Tenancy dated September 8, 2021 ("Second 10 Day Notice"). TG submitted a Proof of Service on Form RTB-34 together with the tracking number for the registered mail. I find that the Second 10 Day Notice was served on of the Tenant in accordance with section 88 of the Act. The Tenant admitted that he had not filed an amendment to his application to dispute the Second 10 Day Notice or filed a new application for dispute resolution to dispute the Second 10 Day Notice.

TG submitted a detailed statement of account of the rental charges from July 1, 2021 through to October 1, 2021 together with payments made by the Tenant. TG also submitted receipts for payments made by the Tenant on August 20, 2021 and September 20, 2021 which indicated that the payments were received for "use and occupation only". TG testified that the Tenant is in arrears as follows:

Date	Owed	Paid	Balance
01-Jul-21	\$1,725.00		\$1,725.00
01-Aug-21	\$1,725.00		\$3,450.00
20-Aug-21		\$1,725.00	\$1,750.00
01-Sep-21	\$1,725.00		\$3,450.00
20-Sep-21		\$1,725.00	\$1,725.00
01-Oct-21	\$1,725.000		\$3,450.00
Total	\$6,900.00	\$3,450.00	\$3,450.00

The Tenant testified that there had been a flood in building which had caused damage to the rental unit as well as other units above and below his rental unit earlier in 2021. The Tenant testified that he had a verbal understanding of the previous property manager in respect of the Tenant completing repairs to the unit including painting, installation of carpeting and baseboards. The Tenant stated he had been working with the previous property manager regarding the expenses to perform the repairs and the rental arrears and that he had been attempting to communicate with JB regarding these matters. However, the Tenant did not provide any evidence or call witnesses to corroborate his testimony that there was any understanding regarding any reduction or forgiveness of rent. JB stated that he had recently taken over as property manager and that he and the Landlord were completely unaware that there had been any damage to the rental unit. JB denied that any arrangements had been made between the Landlord and Tenant regarding a reduction or forgiveness of rent.

Analysis

Section 26 of the Act states:

- 26 (1)** 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.

I find that monthly rent is \$1,725.00 and is due on the first of the month and that from July 2021 through to October 1, 2021, a total of \$6,900.00 was payable for the rental unit. I accept the Tenant paid the Landlord \$1,725.00 during each of August and September 2021 leaving a total of \$3,450.00 in rental arrears. As such, I find that the Tenant is \$3,450 in total arrears as calculated above. The Tenant must compensate the Landlord this amount. Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord \$3,450.00 in satisfaction of the arrears owed.

As such, I find that the 10 Day Notice was issued for a valid reason. I have reviewed the 10 Day Notice and find it complies with the section 52 form and content requirements. Accordingly, pursuant to section 55(1) of the Act, I order that the Tenant provide the Landlord with vacant possession of the rental unit.

Section 72(2) of the Act, in part, states:

- (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted
 - (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and
 - (b) *in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.*

[emphasis in italics added]

As I have ordered the Tenant to pay the Landlord \$3,450.00 for unpaid rent, section 72(2)(b) of the Act requires that I deduct the Tenant's security and pet damage deposits totalling \$1,725.00 from the \$3,450.00 owing by the Tenant to the Landlord.

Accordingly, pursuant to section 67 of the Act, I order that the Tenant pay the Landlord \$1,725.00 as follows:

Description	Amount
Rental Arrears	\$3,450.00
Security Deposit Credit	-\$862.50
Pet Damage Deposit Credit	-\$862.50
Total	\$1,725.00

Conclusion

Pursuant to section 55 of the Act, I order that the Tenant deliver vacant possession of the rental unit to the Landlord within two days after being served with a copy of this decision and attached orders by the Landlord.

Pursuant to 67 of the Act, I order the Tenant pay the Landlord \$1,725.00.

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: November 26, 2021

Residential Tenancy Branch