



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, LRE

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$1000.00 pursuant to section 67;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70;

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:51 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlords attended the hearing and 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. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

The landlords confirmed that the tenant served the landlords with the notice of dispute resolution form and supporting evidence package. The landlords testified that they were unable to serve their evidence package to the tenant because the tenant abandoned the rental property with no forwarding address or way to contact her. I find that all parties have been served with the required documents in accordance with the Act.

At the outset of the hearing, I informed the landlords that recording of the hearing was prohibited and they were reminded to refrain from doing so. They acknowledged the term, and each provided a solemn affirmation.

I note that s. 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the Landlord is entitled to an Order of Possession.

Section 55(1.1) allows me to consider a Monetary Order only if a tenant submits an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy and the application is dismissed. Both s. 55 and 55(1.1) requires the Landlord issue a notice to end tenancy that complies with the *Act*.

Preliminary Issue-Application Dismissed

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7- During the Hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

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.

Further, Rule 7.4 states:

Rule 7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Rule 2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- *a detailed calculation of any monetary claim being made;*
- *a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and*
- *copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence]/*

Other than the initial application, the tenant failed to submit the above referenced documentation to support her claim and did not attend the hearing to present oral testimony.

Accordingly, in the absence of any attendance at this hearing by the applicant (tenant) I order the tenant's application dismissed without leave to reapply.

I note s. 55 of the *Act* requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession or a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Relying on *M.B.B v. Affordable Housing Charitable Association*, 2018 BSCS 2418, the landlord must still prove the grounds to end tenancy when a tenant does not appear to present their application to cancel the notice.

[27] I accept it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the grounds that M.B.B. had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

Issues:

- 1) Is the landlord entitled to an order of possession?
- 2) Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The Applicant (tenant) did not attend the hearing and did not upload any written evidence to the Residential Tenancy Branch in support of her claim.

The landlords did attend the hearing and their undisputed and affirmed testimony is as follows. The tenant and the landlord entered into a written tenancy agreement. The tenancy agreement was not submitted into evidence by the applicant or the landlord. Rent was payable on the 1st day of the month in the amount of \$1575.00. The tenant paid a security deposit of \$787.50, which the landlord still retains. One of the conditions of the tenancy was to maintain the property. Within a few months the landlord started to receive multiple complaints from neighbors about the garbage strewn on the property. The landlord approached the tenant advising her she needed to clean up the cluttering and waste on the property. The problem worsened and included hazardous materials stored outside on the property. The landlords provided both written and verbal warnings, with no effect.

In the summer of 2021, the landlords received multiple complaints from neighbors about loud noise/disturbance coming from their rental property. The neighbors complained

that the noise continued undiminished throughout the evenings well into the night. Again, the landlords approached the tenant on several occasions verbally asking her to be respectful of the neighbors and curb the noise levels, again with no result. The landlord then issued written warnings but still did not gain compliance.

The landlords contacted the Residential Tenancy Branch (RTB) to find out what options were open to them. They were told that an option was to download a RTB-33 One Month Notice to End Tenancy for Cause from the RTB website. On August 5, 2021, the landlords served the tenant a One Month Notice to End Tenancy for Cause with a move out date of September 30, 2021.

The noise issues continued, and the property remained unsightly. On September 1, 2021, the tenant did not pay rent. On September 2, 2021, the landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Notice was handed to the tenant in person by the landlord, witnessed by the landlord's son.

Sometime in September the tenant abandoned the property leaving behind broken furniture, food in the fridge, cupboards and in the kitchen along with broken dishes. The landlords again contacted RTB and were told to itemize everything in the house and take photos, which they did.

The landlords' son reached out to the tenant by text in September asking her if she was returning, what she wanted his parents to do with the stuff left behind, and if she was coming to do the end of tenancy inspection. The tenant responded, "I only left what I didn't want" and told the landlord's son to throw out what remained. She refused to participate in the final inspection but said she would drop off the keys, which she has not done to date. The text between the landlord's son and the tenant was the last communication from her. She left no forwarding address.

The landlord submitted an Application to the RTB and then withdrew the application when they determined the tenant abandoned the rental unit.

The landlord uploaded the 10 Day Notice. The 10 Day Notice was not the subject of the current dispute. They also submitted photos of the unsightly property, the emails, and letters that led to the 30-Day Notice. These documents were uploaded on December 13, 2021, 3 days prior to the hearing scheduled for December 16, 2021.

Analysis

The tenant filed a dispute to cancel the One Month Notice to End Tenancy for Cause. The tenant did not file a dispute to cancel the 10 Day Notice.

Section 55(1)(a) and (b) provides as follows:

- (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:*
- (a) ***the landlord's notice to end tenancy complies with section 52*** [form and content of notice to end tenancy], and
 - (b) *the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.* [emphasis added]

The One Month Notice to End Tenancy for Cause was not submitted into evidence by either the tenant or the landlord. I therefore am unable to determine if the landlord's notice to end tenancy complies with s. 52.

Section 55(1.1) reads:

- (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.*

Although the landlord uploaded the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities into evidence, I am unable to consider the Notice because the 10 Day Notice is not the Notice in dispute.

Further, s. 55(1.1) only applies if the tenant files a dispute to cancel the 10 Day Notice and is unsuccessful. Like s. 55(1) the 10 Day Notice must comply with s. 52. Given the tenant did not file an application to cancel the 10 Day Notice, I have no authority to grant the landlord a monetary order.

I am unable to grant a Monetary Award to the landlord; however, the landlord has leave to apply for a **Monetary Order for Rent and/or utilities (for landlord) (MNRL)** pursuant to s. 67 of the *Act*. The application requires specific information including, but not limited to, the date the tenant vacated the rental unit and the last date rent was paid. The RTB website provides hearing preparation guidance for both landlords and tenants, that may be helpful to review when making an application to the RTB for Dispute Resolution.

Conclusion

The tenant is unsuccessful in her application because she failed to attend the hearing and submit the required documentation. Pursuant to the Rules noted above and section 62 of the *Act*, I dismiss the Tenant's Application wholly without leave to reapply.

The landlord has leave to apply for a Monetary Order for Unpaid Rent and or utilities (MNRL).

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: December 17, 2021

Residential Tenancy Branch