



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, CNR

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenants on August 27, 2021, under the *Residential Tenancy Act* (the *Act*), and an amendment to the Application (the Amendment) filed on September 7, 2021, seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice); and
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice).

The hearing was convened by telephone conference call at 9:30 A.M. (Pacific Time) on January 7, 2022, and was attended by the Landlords, who provided affirmed testimony. The Tenants did not attend. The Notice of Dispute Resolution Proceeding states the date and time of the hearing, that the hearing will be conducted by telephone conference call, and provides the phone number and access code for the hearing. It also instructs participants that they are to call into the hearing themselves no more than five minutes before the start of the hearing. I confirmed that the details shown in the Notice of Dispute Resolution Proceeding were correct and I note that the Landlords were able to attend the hearing promptly. The Landlords attended the hearing at the scheduled time, ready to proceed, and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Although the line remained open for 28 minutes, neither the Tenants nor an agent acting on their behalf appeared to provide evidence or testimony for my consideration.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of

Procedure (the Rules of Procedure), however, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlords and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled. Rule 7.3 of the Rules of Procedure 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. As neither the Tenants nor an agent acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenants' Application, I therefore dismiss the Tenants' Application in its entirety, without leave to reapply.

Having made the above finding, I will now turn my mind to whether the Landlords are entitled to either an Order of Possession pursuant to section 55(1) of the *Act* or a Monetary Order for unpaid rent pursuant to section 55(1.1) of the *Act*.

#### Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession pursuant to sections 46 and 55 of the *Act*?

Are the Landlords entitled to recovery of unpaid rent pursuant to section 55(1,1) of the *Act*?

#### Background and Evidence

The Tenancy agreement in the documentary evidence before me states that the month to month (periodic) tenancy commenced on April 1, 2021, that rent in the amount of \$1,500.00 is due on the first day of each month, and that a security deposit in the amount of \$750.00 was required. At the hearing the Landlords stated that the above noted terms are correct, that the \$750.00 security deposit was paid, that they still retain this amount in trust, and that the Tenants have not yet provided a forwarding address, despite having moved out on September 12, 2021.

The Landlords stated that when the Tenants did not pay the \$1,500.00 in rent due on September 1, 2021, the 10 Day Notice was personally served on them on September 2,

2021. The 10 Day Notice in the documentary evidence before me is in writing on the approved form, signed and dated September 2, 2021, gives the rental unit address, has an effective date of September 12, 2021, and states that \$1,500.00 due on September 1, 2021 was unpaid.

The Landlord stated that the Tenants vacated the rental unit on September 12, 2021, in compliance with the 10 Day Notice but never paid any rent for September 2021.

No one appeared at the hearing on behalf of the Tenants to provide any evidence or testimony for my consideration.

### Analysis

As there is no evidence before me to the contrary, I find that a tenancy agreement to which the *Act* applies existed between the parties, the terms of which are set out in the tenancy agreement in the documentary evidence before me.

The 10 Day Notice in the documentary evidence before me is in writing on the approved form, signed and dated September 2, 2021, gives the rental unit address, has an effective date of September 12, 2021, and states that \$1,500.00 due on September 1, 2021 was unpaid. As a result, I find that it complies with section 52 of the *Act*.

Although the Tenants disputed the 10 Day Notice on September 7, 2021, which is within the legislative time period set out under section 46(4) of the *Act*, they failed to attend the hearing of their own Application. As a result, I accepted the Landlords' affirmed and undisputed testimony that the 10 Day Notice was personally served on the Tenants on September 2, 2021, that the Tenants vacated the rental unit on September 12, 2021, and that no rent for September 2021 was ever paid. As there is no evidence before me that the Tenants had a right under the *Act* to deduct or withhold this rent, I therefore find that the Landlords are entitled to an Order of Possession for the rental unit as a result of the 10 Day Notice, pursuant to sections 46(5) and 55(1) of the *Act*. However, as the Landlords stated that Tenants vacated the rental unit on September 12, 2021, and therefore an Order of Possession is no longer required, I have not issued one.

Pursuant to section 55(1.1) of the *Act* and Residential Tenancy Branch Policy Guideline (Policy Guideline) #3, I also find that the Landlords are entitled to compensation for outstanding rent in the amount of \$600.00, calculated at a per diem rate of \$50.00 (\$1,500.00/30 days), multiplied by the 12 days the tenancy was in effect for September 2021. If the Landlords suffered any additional loss in rent after the date the tenancy

ended on September 12, 2021, they remain at liberty to file an Application for Dispute Resolution seeking recovery of those amounts from the Tenants. Pursuant to section 72(2)(b) of the *Act*, and at the request of the Landlords, I authorize the Landlords to retain \$600.00 from the Tenants \$750.00 security deposit for unpaid September 2021 rent between the dates of September 1, 2021 – September 12, 2021. The remain \$150.00 balance of the security deposit must be dealt with in accordance with the *Act*.

### Conclusion

The Tenants' Application is dismissed without leave to reapply. The Landlords are entitled to retain \$600.00 from the Tenants' security deposit for unpaid rent for the period of September 1, 2021 – September 12, 2021.

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: January 7, 2022

---

Residential Tenancy Branch