



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR

### Introduction

This hearing dealt with two related Applications for Dispute Resolution (the Applications) filed by the Tenants on August 5, 2021, and August 20, 2021, under the *Residential Tenancy Act* (the *Act*), seeking:

- Cancellation of two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities (10 Day Notices).

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on December 10, 2021, 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 using the information contained in the Notice of Dispute Resolution Proceedings served on them by the Tenants. 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 67 minutes, neither the Tenants nor an agent acting on their behalf appeared to provide evidence or testimony for my consideration.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the applicant(s) must be served with a copy of any documentary evidence intended to be relied on by the respondent(s) at the hearing, and as the Tenants failed to attend the hearing, I confirmed service of these documents as follows. The Landlords stated that

they personally served their evidence on the Tenants on September 8, 2021, and that the Tenants acknowledged in writing that it was received on the proof of service form. As there is no evidence before me to the contrary, I accept the Landlords' affirmed and undisputed the testimony that their documentary evidence was personally served on the Tenants on September 8, 2021, in compliance with the *Act* and the Rules of Procedure. I therefore accept it for consideration.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with 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 Applications, I therefore dismiss the Tenants' Applications 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 fixed-term tenancy commenced on April 1, 2021, and was set to end on March 31, 2022, after

which time it could continue on a month to month basis. The tenancy agreement states that rent in the amount of \$2,400.00 is due on the first day of each month, and that both a security deposit and a pet damage deposit were required in the amount of \$1,200.00 each. At the hearing the Landlords stated that the above noted terms are correct, that the \$2,400.00 in deposits was paid, and that they which still hold the deposits in trust, less \$100.00 previously awarded to them by the Residential Tenancy Branch (the Branch).

The Landlords stated that the Tenants failed to pay rent on time and as a result, they were served with two separate 10 Day Notices. The first 10 Day Notice in the documentary evidence before me is missing the first page but at the hearing the Landlords stated that it is in writing on the approved form, contains the address for the rental unit, has an effective date of August 12, 2021, and is signed and dated August 1, 2021. The second page was before me and states that the Tenants failed to pay \$2,400.00 in rent due on August 1, 2021. At the hearing the Landlord's stated that the Tenants were served with the first 10 Day Notice by email and the Tenants acknowledged in their Applications that they received it by email on August 2, 2021.

The Landlords stated that the Tenants then made three rent payments by etransfer as follows:

- \$270.00 on August 5, 2021;
- \$200.00 on August 11, 2021; and
- \$100.00 on August 15, 2021.

The Landlords stated that they subsequently served the Tenants with the second 10 Day Notice in person on August 17, 2021, which showed the updated rent amount owing for August 2021. The second 10 Day Notice in the documentary evidence before me is in writing on the approved form, contains the address for the rental unit, has an effective date of August 28, 2021, and is signed and dated August 17, 2021. The second page states that the Tenants have failed to pay \$1,830.00 of the \$2,400.00 in rent due on August 1, 2021. In their Applications the Tenants acknowledged personal receipt on August 17, 2021.

The Landlords stated that the Tenants never paid any more rent and that although they vacated the rental unit by the end of September 2021, as the result of an Order of Possession granted to the Landlords under section 56 of the *Act*, some of the Tenants possessions remained in the rental unit until the end of October 2021. The Landlords stated that the two-day Order of possession was posted to the door of the rental unit on

either September 28, 2021, or September 29, 2021, and that it was also sent to the Tenants by email and a social medial platform.

The Landlords stated that the Tenants owe \$1,830.00 in outstanding rent for August 2021, and \$2,400.00 in 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, as summarized above.

Based on the documentary evidence before me, I find that the second 10 Day Notice complies with section 52 of the *Act*. As I was not provided with a copy of the first page of the fist 10 day Notice, I find that I cannot be satisfied that it complies with section 52 of the *Act*.

Although I am satisfied that the Tenants disputed the 10 Day Notices within the legislative time period set out under section 46(4) of the *Act*, they failed to attend the hearing of their own Applications. Based on the information contained in the Applications and the Landlords' affirmed and undisputed testimony, I am satisfied that the second 10 Day Notice was personally served on the Tenants on August 17, 2021, and that the Tenants vacated the rental unit on approximately September 30, 2021. In the previous decision from the Branch dated September 24, 2021, another arbitrator ordered that the tenancy was ended immediately pursuant to section 56 of the *Act*. As a result, I am satisfied that the tenancy ended on September 24, 2021, as set out in the previous decision and in line with Residential Tenancy Policy Guideline #3.

As there is no evidence before me that the Tenants had a right under the *Act* to deduct or withhold rent, I therefore find that the Landlords would have been entitled to an Order of Possession for the rental unit because of the second 10 Day Notice, pursuant to sections 46(5) and 55(1) of the *Act*, had the tenancy not already ended. As a result, I find that an Order of Possession is not required.

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 \$3,750.00, calculated as follows:

- \$1,830.00 for August of 2021; and
- \$1,920.00 for September 2021, calculated at a per diem rate of \$80.00 (\$2,400/30 days) for the period of September 1, 2021 – September 24, 2021.

If the Landlords suffered any additional loss of rent after September 24, 2021, the date I am satisfied that the tenancy ended, 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 the remaining \$2,300.00 in deposits held in trust by them, in partial satisfaction of the above owed amounts. Pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order in the amount of **\$1,450.00** and I order the Tenants to pay this amount to the Landlords.

### Conclusion

The Tenants' Applications are dismissed without leave to reapply. The Landlords are entitled to retain the \$2,300.00 remaining balance of the deposits held in trust by them.

Pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order in the amount of **\$1,450.00**. The Landlords are provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: January 7, 2022

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Residential Tenancy Branch