



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR, LRE, CNR-MT, OLC, FFT**

Introduction

This hearing dealt with the Tenants' applications pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act;
2. More time to dispute the 10 Day Notice pursuant to Section 66 of the Act;
3. An Order for the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent attended the hearing at the appointed date and time and provided affirmed testimony. The Tenants did not attend the hearing. 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 Landlord and I were the only ones who had called into this teleconference. The Landlord attended the hearing and was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord's Agent that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord's Agent testified that he was not recording this dispute resolution hearing.

The Landlord served the Tenants with a 10 Day Notice for Unpaid Rent on November 5, 2021 by posting the 10 Day Notice on the Tenants' door (the "First 10 Day Notice"). The Landlord's Agent testified this First 10 Day Notice was withdrawn as the Tenants paid the outstanding rent.

The Landlord served a second 10 Day Notice for an unpaid pet damage deposit by posting the 10 Day Notice on the Tenants' door on December 1, 2021 (the "Second 10 Day Notice").

At the outset of the hearing, the Landlord's Agent noted that the Second 10 Day Notice for an unpaid pet damage deposit was the only claim the Landlord was pursuing. I told the Landlord that 10 Day Notices are used for unpaid rent or utilities only. The Landlord asked if they should have used the One Month Notice to End Tenancy For Cause. I advised that my role is not to provide legal advice and directed they speak to an Information Officer to get the correct process and information.

Preliminary Matter

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. The First 10 Day Notice was withdrawn by the Landlord because the Tenants paid the outstanding rent. In the hearing, the Landlord confirmed that the First 10 Day Notice was withdrawn and I find the First 10 Day Notice has no effect because the Tenants paid the overdue rent pursuant to Section 46(4)(a) of the Act.

Issues to be Decided

1. Are the Tenants entitled to a cancellation of the Landlord's Second 10 Day Notice (for unpaid pet damage deposit)?
2. If the Tenants are not successful, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to more time to dispute the 10 Day Notice?
4. Are the Tenants entitled to an Order for the Landlord to comply with the Act, regulations and tenancy agreement?
5. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord's Agent said this periodic tenancy began on November 1, 2020. Monthly rent is \$2,054.02 payable on the first day of each month. A security deposit of \$967.50 was collected at the start of the tenancy and is still held by the Landlord.

The Landlord's Agent said the First 10 Day Notice issued on November 5, 2021 is withdrawn.

The Landlord's Agent testified that there was confusion at the bank level with payment of the Tenants' rent. The Tenants' evidence package contained a document that the \$967.50 pet damage deposit was paid. It seems that the Landlord and the Tenants may have to sit down with their banks to straighten this matter out. The Landlord testified that the pet damage deposit still remains unpaid in their books.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

RTB Rules of Procedure 7.3 deals with the consequences of not attending the hearing. It states:

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.

As the Tenants did not attend the hearing, and in the absence of any submissions from the Tenants, I order their dispute resolution application dismissed with leave to re-apply. I make no findings on the merits of the matter.

The Landlord used a 10 Day Notice to End Tenancy for unpaid rent or utilities, to end a tenancy for non-payment of a pet damage deposit. The 10 Day Notice applies to Section 46 of the Act.

The Definitions in the Act define rent:

*"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, **but does not** include any of the following:*

- (a) a security deposit;*
- (b) a pet damage deposit;***
- (c) a fee prescribed under section 97 (2) (k) [regulations in relation to fees];*

Sec 47(1)(a) of the Act states that:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;*

And under Section 47(2):

- (2) A notice under this section must end the tenancy effective on a date that is*
 - (a) **not earlier than one month** after the date the notice is received, and*
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

The Landlord cannot use #RTB-30 - 10 Day Notice to End Tenancy For Unpaid Rent or Utilities for the non-payment of a pet damage deposit. I cancel the Landlord's Second 10 Day Notice issued for an unpaid pet damage deposit. The tenancy shall continue until it is ended in accordance with the Act.

For the benefit of the Landlord, the Landlord may wish to discuss with an Information Officer at the RTB the options available to him to properly seek payment of the pet damage deposit. An Information Officer can be reached at:

5021 Kingsway

Burnaby, BC

Phone: 250-387-1602

Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

Conclusion

The Tenants' application is dismissed with leave to re-apply. This dismissal does not extend any time limitation that may apply under the Act.

The Landlord's Second 10 Day Notice is cancelled.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 1, 2022

Residential Tenancy Branch