



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 Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated January 4, 2021.

The Tenant, J.D., the Landlord, and an agent for the Landlord, I.B. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. However, the Tenant called into the hearing five minutes late, and left the teleconference call approximately fifteen minutes later, as she said she was frustrated with the back-and-forth process of the hearing.

Initially, I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions, as the Tenant would have been, if she had not hung up early in the hearing.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that

the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. Rule 7.4 applies to this situation, as it states the following:

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. .

[emphasis added]

This Rule is also relevant to the Tenant's early departure from the hearing. While she was in attendance, I had to caution the Tenant to stop interrupting whoever was speaking, as she repeatedly interrupted the Agent and me in the little time that she was in the call. Further, by hanging up early, the Tenant relinquished her opportunity to respond to the Landlord's testimony on the primary issues of the hearing, or to have her evidentiary submissions considered, pursuant to Rule 7.4.

I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the tenant's application, and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content.

Further, and pursuant to Rule 6.6, the onus to prove their case is on the person making the claim. In most circumstances this is the person who applies for dispute resolution. However, in some circumstances, the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. As such, the burden of proof is on the Landlord in this situation.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The Parties agreed that the periodic tenancy began on August 1, 2021, with a monthly rent of \$1,400.00 for one person, with an additional \$300.00 owing for any additional occupants. The rent was due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$700.00, and no pet damage deposit. The Landlord confirmed that she still holds the security deposit in full.

The Tenant said that she did not move in with the other Tenant initially. She said she moved in, in December 2021. However, after some discussion between the Parties, the Tenant said that it was October 2021 when she moved, at which point the monthly rent went up by \$300.00 to \$1,700.00, as was the term of the tenancy agreement.

The Parties submitted a copy of the 10 Day Notice, which was signed and dated January 4, 2022, it has the rental unit address, it was served in person on January 4, 2022, with an effective vacancy date of January 14, 2022, and it was served on the grounds that the Tenants failed to pay \$2,840.00 in rent that was due on January 1, 2022.

Before she hung up, the Tenant disputed this monetary claim, saying that they were paid up until February 2022, for which the Tenant acknowledged that she had not paid any rent.

After the Tenant hung up, I asked the Landlord why I should award her with an order of possession and a monetary order for unpaid rent. The Landlord said that the Tenants owed her the following amounts in rent.

Date Rent Due	Amount Owing	Amount Received	Amount Owing
Nov. 1, 2021	\$1,700.00	\$850.00	\$850.00
Dec. 1, 2021	\$1,400.00	\$360.00 + 450.00	\$590.00

Jan.1, 2022	\$1,700.00	\$1,400.00	\$300.00
Feb.1, 2022	\$1,400.00	\$0.00	\$1,400.00
	TOTAL		\$3,140.00

As the Tenant did not remain in the hearing long enough to present her evidence and her version of events, I was without any testimony countering the Landlord's claims in the hearing, although the burden of proof remains on the Landlord.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

...

The Tenant applied for dispute resolution, but she did not remain in the hearing long enough to pursue her claim against the Landlord's evidence.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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. There is no evidence before me that the Tenants had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Based on the above, I find that the amount of rent outstanding listed on the 10 Day Notice of \$2,840.00 is incorrect, as it was based on outstanding rent owing when the Landlord served the 10 Day Notice. The Agent advised of how much is owing at the time of the hearing, which is set out in the above rent owed table.

Section 55 (1.1) states that if a tenant applies to dispute a landlord's notice to end a tenancy, then the director must grant an order requiring the payment of the unpaid rent by the tenant, if the following circumstances apply:

- (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;

I find that the 10 Day Notice complies with section 52 of the Act, as to form and content. Further, based on the testimony and considered evidence, I uphold the Landlord's 10 Day Notice to end the tenancy. Accordingly, I find that the Landlord is eligible for a monetary order pursuant to the Tenants' Application. I, therefore award the Landlord with **\$3,140.00** from the Tenants, pursuant to sections 46, 55, and 67 of the Act.

The Tenant did not attend enough of the hearing to provide testimony as to why the rent was not paid, and she did not point to any documentary evidence establishing that she had a right under the Act to deduct all or a portion of the \$3,140.00.00 in rent owed as of February 1, 2021. Therefore, the Tenant's Application to cancel the 10 Day Notice is dismissed without leave to reapply.

As a result, I award the Landlord with an **Order of Possession** pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenants have not paid rent for February 2021, the Order of Possession will be **effective two days** after deemed service of the Order on the Tenants.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenants' security deposit of \$700.00 in partial satisfaction of the Landlord's monetary award. I authorize the Landlord to retain the **\$700.00** security deposit, pursuant to section 72 of the Act. I award the Landlord a Monetary Order of **\$2,440.00** from the Tenant, pursuant to sections 26, 67 and 72 of the Act for the remaining balance owing.

Conclusion

The Tenants are unsuccessful in their Application, as the Landlord provided sufficient evidence to establish the validity of the 10 Day Notice. The Tenants have not paid full

rent for the last four months; therefore, their Application is dismissed without leave to reapply.

Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession effective **two days after service of this order** on the Tenants. The Landlord is 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, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is awarded \$3,140.00 in unpaid rent from the Tenants. The Landlord is authorized, pursuant to section 72 of the Act to retain the Tenants' **\$700.00** security deposit in partial satisfaction of this award.

I grant the Landlord a Monetary Order of **\$2,440.00** for the remaining amount of unpaid rent owed by the Tenants, pursuant to section 67 of the Act.

This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: February 15, 2022

Residential Tenancy Branch