



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **CNR**

### Introduction

The hearing was convened as a result of the Tenant's application under the *Residential Tenancy Act* (the "Act") for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated November 5, 2021 ("10 Day Notice") pursuant to section 46.

The Tenant did not attend this hearing scheduled for 9:30 am. I left the teleconference hearing connection open for the entire hearing, which ended at 10:04 am, in order to enable the Tenant to call into this teleconference hearing. The Landlord 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 Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

Although the Tenant was not present at the hearing to testify as to the method and date she served the NDRP on the Landlord, the Landlord acknowledged he received the "NDRP" by registered mail. The Landlord stated he wished to proceed with the hearing. I find that the Landlord was sufficiently served with the NDRP in accordance with section 71(2)(b) of the Act.

### Preliminary Matter – Effect of Non-Attendance by Tenants

Rules 7.1, 7.3 and 7.4 of the *Residential Tenancy Branch Rules of Procedure* state:

#### **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 the party, or dismiss the application, with or without leave to re-apply.

### **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.

Given the Tenant did not attend the hearing within 10 minutes of its commencement, the Tenant's application is dismissed without leave to reapply. As the Tenant was not present at the hearing, the Tenant's written submissions were not considered.

#### **Preliminary Issue – Amendment to Increase Monetary Claim for Unpaid Rent**

The Landlord testified the 10 Day Notice stated the Tenant had rental arrears of \$1,450.00 as of November 1, 2021. The Landlord stated he had made an error in calculating the rental arrears and the correct amount was \$1,390.00, less than the amount claimed in the 10 Day Notice. The Landlord stated the Tenant is still in possession of the rental unit. The Landlord stated the Tenant did not pay the rent for December 2021 and January 2022 and has accrued an additional \$1,640.00 in rental arrears since the date of the 10 Day Notice. The Landlord made a request that I amend the amount claimed by the Landlord from the Tenant for the rental arrears to \$3,030.00.

### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The Tenant has continued occupy the rental unit after the effective date of the 10 Day Notice. As the Tenant could reasonably have anticipated that the Landlord would seek additional rental arrears, I will allow the amendment of the Landlord's claim for rental arrears to be increased to \$3,300.00.

### Issues

As the Tenant's application has been dismissed, is the Landlord entitled to:

- an Order of Possession pursuant to section 55(1) of the Act?
- a Monetary Order for unpaid rent pursuant to section 55(1.1) of the Act?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenant's application and my findings are set out below.

The Landlord testified there is no written tenancy agreement between the Landlord and Tenant. The Landlord stated the tenancy commenced on August 15, 2018, on a month-to-month basis, with rent of \$820.00 payable on the 1<sup>st</sup> day of each month. The Landlord stated the Tenant paid a security deposit of \$400.00 that he is currently holding in trust for the Tenant.

The Landlord stated he served the 10 Day Notice on the Tenant's door on November 5, 2021. Pursuant to section 90 of the Act, the Tenant was deemed to have received the 10 Day Notice on November 8, 2021. Pursuant to section 46(4) of the Act, the Tenant had 5 days, or November 16, 2021, being the next business day after the expiry 5-day dispute period, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the Residential Tenancy Branch disclose the Tenant made her application on November 9, 2021. Accordingly, the Tenant made her application within the five-day dispute period. Although the Tenant made her application within the dispute period, I have dismissed her application because she did not attend this hearing.

As noted above, the Landlord testified he erroneously stated the amount of rent owing on the 10 Day Notice was \$1,450.00 when it should have stated the Tenant owed unpaid rent of \$1,390.00. As noted above, the Landlord stated the Tenant is still in

possession of the rental unit and has not paid any rent for the months of December 2021 and January 2021. The Landlord testified the Tenant called many times each day in October saying she overpaid the Landlord for rent and needed the money back. The Landlord stated the Tenant continued to call and told him that she did not have food for her children. The Landlord stated he felt badly for her and decided to e-transfer \$250.00 to the Tenant. The Landlord submitted a copy of the e-transfer records disclosing the transfer of \$250.00 to the Tenant on October 20, 2021, to corroborate his testimony. The Landlord stated the Tenant owed a total of \$3,300.00 in rental arrears calculated as follows:

| Date         | Rent Owed         | Paid              | Balance           |
|--------------|-------------------|-------------------|-------------------|
| 01-Aug-21    | \$820.00          | \$0.00            | \$820.00          |
| 01-Sep-21    | \$820.00          | \$0.00            | \$1,640.00        |
| 01-Sep-21    |                   | \$820.00          | \$820.00          |
| 22-Sep-21    |                   | \$820.00          | \$0.00            |
| 29-Sep-21    |                   | \$500.00          | -\$500.00         |
| 01-Oct-21    | \$820.00          | \$0.00            | \$320.00          |
| 20-Oct-21    |                   | -\$250.00         | \$570.00          |
| 01-Nov-21    | \$820.00          | \$0.00            | \$1,390.00        |
| 01-Dec-21    | \$820.00          | \$0.00            | \$2,210.00        |
| 01-Jan-22    | \$820.00          | \$0.00            | \$3,030.00        |
| <b>Total</b> | <b>\$4,920.00</b> | <b>\$1,890.00</b> | <b>\$3,030.00</b> |

### Analysis

Section 26(1) of the Act states:

- 26 (1)** A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

The undisputed testimony of the Landlord is that he is owed \$3,030.00 from the Tenant for rental arrears.

Sections 46 and 53 of the Act state:

- 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*.
- 53** (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
- (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.
- (3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) [*tenant's notice: landlord breach of material term*], 46 [*landlord's notice: non-payment of rent*] or 50 [*tenant may end tenancy early*], if the effective date stated in the notice is any day other than 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 effective date is deemed to be 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
- (a) that complies with the required notice period, or
- (b) if the landlord gives a longer notice period, that complies with that longer notice period.

I find the Landlord has proven cause to serve the Tenant with the 10 Day Notice as the Tenant did not comply with section 26(1) of the Act. Pursuant to section 68(2), I find the tenancy has ended on February 10, 2022.

Section 55(1) of the Act states:

- 55**(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.

(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.

As I have dismissed the Tenant's application because she did not attend the hearing, section 55(1) requires I grant to the Landlord an Order of Possession if the 10 Day Notice complies with section 52. I have reviewed the 10 Day Notice and find it complies with the form and content requirements of section 52. Pursuant to section 55(1) of the Act, the Landlord is granted an Order of Possession effective two days after service of the Order of Possession on the Tenant by the Landlord.

Sections 26 of the Act state:

**26 (1)** A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

I am satisfied upon hearing the undisputed testimony of the Landlord that an additional \$1,640.00 of rental arrears accrued after the date the 10 Day Notice was served on the Tenant. With the rental arrears of \$1,390.00 owing as of the date of the 10 Day Notice, the Tenant owes a total of \$3,300.00 in rental arrears as of the date of this hearing. I order the Tenant pay the Landlord \$3,300.00 for the rental arrears. Pursuant to section 55(1.1) of the Act, I order the Tenant pay the Landlord \$3,300.00 in satisfaction of the rental arrears owed.

Pursuant to section 72(2) of the Act, the Landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

### Conclusion

The Tenant's application is dismissed without leave to reapply.

Pursuant to section 55(1) of the Act, I order the Tenant deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and attached Order of Possession by the Landlord. Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 55(1.1) of the Act, I order the Tenant pay the Landlord \$2,630.00 representing the following:

| Description                                     | Amount            |
|-------------------------------------------------|-------------------|
| Rental Arrears from August 2021 to January 2022 | \$3,030.00        |
| Less Tenant's Security Deposit                  | -\$400.00         |
| <b>Total</b>                                    | <b>\$2,630.00</b> |

This Monetary Order must be served by the Landlord on the Tenant and may be enforced in Provincial 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: February 10, 2022

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Residential Tenancy Branch