



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal Pacific Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR-MT, RR, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) and more time to cancel the Notice pursuant to section 46;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This matter was set for hearing by telephone conference.

The landlord YX attended with the agent BL (“the landlord”). The landlord had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

The landlord testified that they had not been served with any documents by the tenant and had learned of the hearing by email from the tenant.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 15 minutes to allow the tenant the

opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord testified they were not recording the hearing.

The landlord confirmed the email address to which the Decision shall be sent.

Preliminary Issue - Dismissal of Tenant's Application

Rule 7.3 of the Rules of Procedure also provides 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 re-apply.

Rule 7.4 states that 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 to present evidence, any written submissions supplied may or may not be considered. Only the evidence referred to by the landlord was used in this this decision.

As the tenant has not attended the hearing and presented evidence, and the landlord has attended, I dismiss the tenant's application without leave to reapply.

Preliminary Issue – Tenant Moved Out

The landlord provided affirmed testimony that the tenant vacated the unit on December 28, 2021.

At the time the tenant moved out, rent was in arrears in the amount of \$4,400.00.

The landlord requested a Monetary Order for unpaid rent for the months of November and December 2021 in the amount of \$4,400.00 and authorization to apply the security deposit of \$1,100.00 to the Order.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The landlord provided the following uncontradicted testimony as the tenant did not attend the hearing.

The parties entered into a written tenancy agreement beginning on December 20, 2021, for a fixed term of one year ending December 31, 2021. The landlord testified the monthly rent was \$2,200.00 and was payable on the first of the month. The tenant provided a security deposit at the beginning of the tenancy of \$1,100.00 which the landlord holds. The tenant has not authorized the landlord to apply the security deposit to the outstanding rent.

The tenant did not pay the rent of \$2,200.00 due on November 1, 2021. The landlord accordingly issued a 10 Day Notice dated November 8, 2021. The Notice was served that day by posting to the tenant's door, thereby effecting service under section 90 of the Act three days later, that is on November 11, 2021. A copy of the Notice was submitted which is in the RTB form.

The Notice states that the tenant did not pay rent due on November 1, 2021 and provided the tenant could apply for dispute resolution 5 days after service. The tenant disputed the Notice November 20, 2021, and therefore late. The tenant applied for more time to dispute the Notice and the tenant's application has been dismissed without leave to reapply.

The landlord testified the tenant also did not pay rent for the month of December 2021 and the total outstanding rent owing is \$4,400.00. The landlord submitted a Monetary Order Worksheet in support of the claim.

The landlord requested a Monetary Order for outstanding rent of \$4,400.00 and authorization to apply the security deposit to the award leaving a balance owing of \$3,300.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, I have reviewed the 10 Day Notice filed in evidence. I find the 10 Day

Notice complies with section 52 of the Act.

I accept the evidence of the landlord that the tenant was in rent arrears of \$4,400.00 for the months of November and December 2021. I find the tenant was served with the 10 Day Notice on November 11, 2021 and did not submit a dispute within the 5 day period.

Although the tenant disputed the 10 Day Notice, I have dismissed the tenant's application without leave to reapply and uphold the 10 Day Notice.

As I have dismissed the tenant's application and have upheld the 10 Day Notice, I must consider the provision of section 55 of the Act that state I must grant the landlord and an Order of Possession and a Monetary Order for unpaid rent.

As the tenant has vacated the unit, the landlord does not require an Order of Possession.

I accept the landlord's undisputed testimony that the tenant owes the landlord the amount of unpaid rent in the total amount of \$4,400.00. I find the landlord has established a total monetary claim of \$4,400.00. I find I must grant the an award in this amount.

I order that the landlord retain the security deposit of \$1,100.00 to offset the amount Owed.

Accordingly, I grant the landlord an order under section 55(4)(b) and 67 of the Act for the balance due of \$3,300.00.

In summary, the tenant's application is dismissed without leave to reapply. The landlord is granted a Monetary Order in the amount of \$3,300.00 pursuant to section 55(4)(b) and 67 of the Act.

Conclusion

The tenant's application is dismissed without leave to reapply. The landlord is granted a Monetary Order in the amount of \$3,300.00 pursuant to section 55(4)(b) and 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) 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: March 11, 2022

Residential Tenancy Branch