



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, RR**

Introduction

This hearing was convened as a result of the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated December 2, 2021 ("10 Day Notice") pursuant to section 46; and
- order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided the Landlord pursuant to section 65.

The Tenants did not attend this hearing. I left the teleconference hearing connection open until 1:40 pm in order to enable the Tenants to call into this teleconference hearing scheduled for 1:30 pm. The Landlord's agent ("CH") 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 CH and I were the only ones who had called into this teleconference.

CH stated the Tenants never served the Landlord with the NDRP. CH stated the Landlord obtained a copy of the NDRP from the Residential Tenancy Branch ("RTB"). CH stated the Landlord wanted to proceed with the hearing. I find the Landlord was sufficiently served with the NDRP pursuant to section 71(2)(b).

Preliminary Matter – Effect of Non-Attendance by Tenants

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* (“RoP”) states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine 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, even though this is the Tenants’ application, the Landlord bears the burden of proof it is more likely than not that the 10 Day Notice is valid. The Landlord must meet this burden even if the Tenants do not attend the hearing.

However, the Tenants bear the onus to prove they are entitled to a rent reduction. As they have not attended the hearing, they cannot discharge this onus. As such, I dismiss this portion of their application, without leave to reapply.

Rules 7.1, 7.3 and 7.4 of the RoP 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 Tenants did not attend the hearing within 10 minutes of its commencement, the Tenants' application is dismissed without leave to reapply. As the Tenants were not present at the hearing, I will not consider any of the evidence submitted by the Tenants in advance of the hearing when adjudicating their application to cancel the 10 Day Notice.

Preliminary Matter – Correction of Landlord's Name

CH stated the corporate name of the Landlord stated in the application did not include "Ltd". CH requested that I amend the application to correct this error.

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.

As the Tenants could reasonably have anticipated the Landlord would seek an amendment to correct its corporate name, I amend the application to insert "Ltd." at the end of the Landlord's name.

Issues

Are the Tenants entitled to:

- an order cancelling the 10 Day Notice?
- if the Tenants are not entitled to cancellation of the 10 Day Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act

and/or a Monetary Order for the rental arrears owing by the Tenants to the Landlord 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 Landlord, only the details of the respective submissions and/or arguments of CH relevant to the issues and findings in this matter are reproduced here. The relevant aspects of the Landlord's claims and my and my findings are set out below.

CH submitted a copy of the tenancy agreement and testified the tenancy commenced on May 1, 2020, for a fixed term until May 1, 2021, and continued on a month-to-month basis. CH stated the Tenants were required to pay rent of \$1,100.00 on the 1st day of each month and pay a security deposit of \$550.00 by April 12, 2020. CH stated the security deposit was paid and the Landlord is holding the deposit in trust for the Tenants. The Landlord stated the Tenants vacated the rental unit on March 17, 2022.

CH stated the 10 Day Notice was posted on the Tenants' door on December 2, 2021. Pursuant to section 90, the Tenant was deemed to have received the 10 Day Notice on December 5, 2021. Although the 10 Day Notice stated the Tenants owed \$680.00 as of December 1, 2021, the actual amount of rental arrears as of that date was \$1,070.00. I find this discrepancy does not invalidate the 10 Day Notice as the Tenants were in arrears paying the rent as of the date of the Notice. CH stated the Tenants owed \$3,503.00 for rental arrears as of March 1, 2022, calculated as follows:

Date	Rent Owed	Paid	Balance
02-Nov-21		\$30.00	-\$30.00
01-Dec-21	\$1,100.00		\$1070.00
02-Dec-21		\$450.00	\$620.00
06-Dec-21		\$15.00	\$605.00
01-Jan-22	\$1,116.00		\$1,721.00
04-Jan-22		\$450.00	\$1,271.00
01-Feb-22	\$1,116.00		\$2,387.00
01-Mar-22	\$1,116.00		\$3,503.00
Total	\$4,448.00	\$945.00	\$3503.00

The Tenants filed their application to dispute the 10 Day Notice on December 6, 2021. The application indicated the 10 Day Notice was served in the Tenants' mailbox or mail slot on December 2, 2021

Analysis

Sections 46(1) through 46(5) 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*.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
 - (b) *must vacate the rental unit to which the notice relates*

[emphasis in italics added]

CH stated the Landlord served the 10 Day Notice in the Tenants' mailbox or mail slot on December 2, 2021. Pursuant to section 90 of the Act, the Tenants were deemed to have received the 10 Day Notice on December 5, 2021. Pursuant to section 46(4) of the Act, the Tenants had 5 days, or December 10, 2021, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the RTB Branch disclose the Tenants made their application on December 6, 2021. Accordingly, the Tenants made their application within the five-day dispute period.

I find the Tenants failed to pay \$680.00 in rent as of December 2, 2021. I accept CH's undisputed testimony in its entirety. I find, as of the date of this hearing, the Tenants are in rental arrears of \$3,503.00 covering the period December 1, 2021 to March 1, 2022. 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.

As such, the Tenants were responsible for paying rent when it was due, notwithstanding any basis for a rent reduction the Tenants thought they were entitled to (which they may have believed, given they were seeking a rent reduction in their application). As such, I find that the 10 Day Notice was issued for a valid reasons. I find the 10 Day Notice meets the form and content requirements of section 52 of the Act. As such, I dismiss the Tenants' application to cancel the 10 Day Notice, without leave to reapply.

Sections 55(1) and 55(1.1) of the Act state:

- 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.

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 entitled to an Order of Possession on the Tenants by the Landlord. As the Tenants have already vacated the rental unit, it is no longer necessary for me to issue an Order of Possession.

Pursuant to section 55(1.1) of the Act, I order the Tenants to pay \$3,503.00, representing unpaid rental arrears from December 1, 2021 to the March 1, 2022, as specified above. Pursuant to section 72(2) of the Act, the Landlord may retain the security deposit of \$550.00 in partial satisfaction of the Monetary Order made above.

Conclusion

The Tenants' application is dismissed without leave to reapply.

Pursuant to section 55(1.1) of the Act, I order the Tenants pay the Landlord \$2,953.00 representing the following:

Description	Amount
Rental Arrears from December 1, 2021 to March 1, 2022	\$3,503.00
Less Tenant's Security Deposit	-\$550.00
Total	\$2,953.00

This Monetary Order must be served by the Landlord on the Tenants 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: March 25, 2022

Residential Tenancy Branch