



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 IN TOWN REALTY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, FFT
 CNR-MT, RP, FFT

Introduction

This hearing dealt with two tenant applications for dispute resolution. The first application, filed on December 18, 2021, sought the following, pursuant to the *Residential Tenancy Act* (the *Act*):

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent dated December 16, 2021, pursuant to section 46;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The second application, filed on February 10, 2022, sought the following, pursuant to the *Residential Tenancy Act* (the *Act*):

- more time to cancel a Notice to End Tenancy, pursuant to section 66;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent dated February 10, 2022, pursuant to section 46;
- an Order for regular repairs, pursuant to section 32; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent (the "agent") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The agent called witness J.S. who affirmed to tell the truth.

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 agent, witness J.S. and I were the only ones who had called into this teleconference.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that she was not recording this dispute resolution hearing.

The agent confirmed her email address for service of this decision and orders.

The agent testified that she posted the landlord's evidence on the tenants' door on March 22, 2022. Witness J.S. testified that he is the agent's assistant and witnessed her post the landlord's evidence on the tenant's door on March 22, 2022. Based on the undisputed testimony of the agent and witness J.S., I find that the landlord's evidence was posted on the tenants door on March 22, 2022 and the tenants were deemed served with the landlords' evidence on March 25, 2022, three days after its posting, in accordance with section 88 and 90 of the *Act*.

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the agent and witness J.S., not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the agent's claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on October 1, 2021 and the tenants have not moved out. Monthly rent in the amount of \$8,000.00 is payable on the first day of each month. A security deposit of \$4,000.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that the tenants did not pay December 2021's rent on December 1, 2021 as required under the tenancy agreement. The agent testified that the tenants' failure to pay rent led to a 10 Day Notice to End Tenancy for Unpaid Rent being posted on the tenants' door on December 16, 2021 (the "First Notice"). A photograph of an envelope on the tenants' door was entered into evidence. The tenants' application for

dispute resolution states that the tenants received the First Notice on December 16, 2021 and that it was posted on their door.

The agent testified that the tenants paid the landlord \$16,000.00, for December 2021 and January 2022's rent through Rent Moola/Letus, on December 22, 2021. The agent testified that it takes about one week for rent paid via Rent Moola to clear. The agent testified that the December 22, 2021 payment was declined on December 26, 2021 due to insufficient funds. The agent entered into evidence a screenshot of the above declined payment.

The agent testified that the landlord then asked the tenants to provide a bank draft to ensure payment was received. The agent testified that on January 11, 2022 the tenants provided a bank draft in the amount of \$16,000.00 to cover December 2021 and January 2022's rent.

The agent testified that the tenants failed to pay February 2022's rent on February 1, 2022 and so a 10 Day Notice to End Tenancy for Unpaid Rent dated February 3, 2022 (the "Second Notice") was posted on the tenant's door. A photograph of an envelope on the tenants' door was entered into evidence. The tenants' application for dispute resolution states that the tenants received the Second Notice on February 4, 2021. The tenants filed to dispute it on February 10, 2022.

The agent testified that the tenants paid the landlord \$16,000.00, for February and March 2022's rent through Rent Moola/Letus, on February 16, 2022. The agent testified that the tenants then contested the payment and withdrew it from Rent Moola/Letus. The agent testified that no other payments have since been made by the tenants and the tenants still owe rent for February, March and April 2022. The agent entered into evidence and email from the property manager to the agent advising that the March 2022's rent did not go through. The agent entered into evidence a rent ledger from February 10, 2022 to March 8, 2022 which states that the payment for February and March's rent totalling \$16,000.00 did not clear and is marked as a negative balance.

The agent testified that no further funds for rent have been received.

Analysis

Rule 7 of the Residential Tenancy Branch Rules of Procedure provides in part as follows:

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. 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.

The tenants failed to attend this hearing. Pursuant to Rule 7 of the Residential Tenancy Branch Rules of Procedure, I dismiss the tenants' applications without leave to reapply.

Section 55(1) and section 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.

Upon review of the First Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Section 46(1) of the *Act* states that 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.

Section 46(4) of the *Act* states that 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.

Based on the agent's undisputed testimony and the tenant's application for dispute resolution, I find that the First Notice was posted on the tenant's door on December 16,

2021, and it was received by the tenants on December 16, 2021. I accept the agent's undisputed testimony that the tenants did not pay the rent stated as outstanding on the First Notice until January 11, 2022. I find that this payment of rent was more than five days after the tenants' received the First Notice; therefore, pursuant to section 46 of the *Act*, I uphold the First Notice.

Since I have dismissed the tenant's application, upheld the First Notice and found that the First Notice meets the form and content requirements of section 52 of the *Act*, the landlord is entitled to a two-day Order of Possession pursuant to section 55(1) of the *Act* and a Monetary Order for unpaid rent pursuant section 55(1.1) of the *Act*.

Residential Tenancy Guideline #3 states:

Compensation for overholding under section 57 of the RTA (section 50 of the MHPTA) is not considered rent since overholding only occurs after a tenancy has ended....

If a tenant has not vacated or abandoned the unit, or the conclusive presumption does not apply, (in other words the right of possession of the rental unit or manufactured home site is in issue at the dispute resolution hearing), the director will usually rely on section 68(2) of the RTA (section 61(2) of the MHPTA) to order that the date the tenancy ends is the date of the dispute resolution hearing, rather than the effective date shown on the notice to end tenancy. If the director is satisfied upon reviewing submitted materials and hearing evidence as to an amount of unpaid rent owing, including rent owing since the time the notice to end tenancy was issued, the director must grant an order to the landlord for the amount of unpaid rent found to be owing.

Pursuant to Residential Tenancy Policy Guideline #3, I order that the tenancy ends today, April 4, 2022. Based on the agent's undisputed testimony, the email from the property manager and the rent ledger entered into evidence, I find that the tenants have not paid any money for rent due between February 1, 2022, and April 4, 2022. I find that the landlord is entitled to lost rent from February 2022 to April 4, 2022. If the landlord suffers further loss due to the tenants overholding, the landlord is at liberty to file an application for dispute resolution seeking damages for overholding. I find that the landlord is entitled to rent from February to March, 2022 in the amount of \$16,000.00 and per diem rent from April 1-4, 2022 pursuant to the following calculation:

$\$8,000.00$ (rent) / 30 (days in April 2022) = $\$266.67$ * 4 (days tenancy ongoing in April 2022) = $\$1,066.68$.

As I have determined that the tenancy ended pursuant to the First Notice, I decline to consider if the tenancy would also end pursuant to the Second Notice.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenants' entire security deposit in the amount of $\$4,000.00$ in part satisfaction of the landlord's monetary claim.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
February rent	\$8,000.00
March rent	\$8,000.00
April rent per diem, April 1-4	\$1,066.68
Less security deposit	-\$4,000.00
TOTAL	\$13,066.68

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, this Order may be filed in the Small Claims Division of the Provincial Court 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: April 04, 2022

Residential Tenancy Branch