



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prospero International Realty
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR-MT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act; and,
2. More time to dispute the notice pursuant to Section 66 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Manager, EW, and Building Manager, ES, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. 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 Landlord's attendees and I were the only ones who had called into this teleconference. The Landlord's Property Manager and Building Manager were given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Property Manager and Building Manager that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Property Manager and Building Manager testified that they were not recording this dispute resolution hearing.

The Landlord served the 10 Day Notice on the Tenant on February 9, 2022 by placing the document in her mailbox. The Tenant applied for dispute resolution on February 17, 2022, but did not attend the hearing. I find that the 10 Day Notice was deemed served on the Tenant on February 12, 2022 pursuant to Sections 88(f) and 90(d) of the Act.

The Tenant served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing sometime after February 24, 2022 when it was issued to the Tenant (the “NoDRP package”). The Landlord’s Property Manager stated that the Tenant first sent the NoDRP package to the wrong address. Later the Landlord received the NoDRP package by Canada Post registered mail. The Landlord’s Property Manager does not recall the date they received the NoDRP package. I find the Landlord was sufficiently served with the NoDRP package on March 1, 2022, in accordance with Section 71(2)(b) of the Act.

The Landlord served the Tenant with their evidence via Canada Post registered mail on May 13, 2022. The Landlord uploaded the Canada Post registered mail receipt and tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord’s evidence was deemed served on the Tenant on May 18, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

Preliminary Matter

The Landlord was successful in an early end of tenancy application on April 22, 2022. The early end of tenancy file number is noted on the cover sheet of this decision. The Tenant vacated the rental unit on May 18, 2022, and the Landlord no longer requires an Order of Possession.

Monetary Amount

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment 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. On this basis, I accept the Landlord’s request to amend their original application from \$1,806.00 to \$1,932.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issue to be Decided

1. Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord confirmed that this periodic tenancy began on June 1, 2016. Monthly rent was \$759.00 payable on the first day of each month. A security deposit of \$340 was collected at the start of the tenancy and is still held by the Landlord.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$1,806.00 in outstanding rent on February 1, 2022. The effective date of the 10 Day Notice was February 22, 2022.

The Landlord uploaded their lease ledger into their documentary evidence. Detailed records were maintained for when rent was due, when rent was paid and when allowable late fees were processed. The Landlord's lease ledger documents that the Tenant owes outstanding rent totaling \$1,932.00. The Landlord seeks a Monetary Order for this amount.

Analysis

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.

This hearing was conducted pursuant to Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

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

Section 26(1) of the Act specifies the rules about payment of rent. It states, *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 Landlord issued a Section 46 landlord's notice: non-payment of rent to the Tenant. The Tenant is still in rental arrears in this tenancy. This tenancy ended early due to the Landlord's successful application under Section 56 of the Act on April 22, 2022. Based on the Landlord's testimony that the Tenant still owes outstanding rent, and the fact that this tenancy has ended, I dismiss the Tenant's application to cancel the Landlord's 10 Day Notice without leave to re-apply. Now, the Landlord no longer requires an Order of Possession. I must consider if the Landlord is entitled to a Monetary Order for unpaid rent. Section 55(1.1) of the Act reads as follows:

Order of possession for the landlord

- 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 find the Landlord's 10 Day Notice complies with the form and content requirements of Section 52 of the Act. I dismissed the Tenant's application and, I find, the Landlord is entitled to a Monetary Order to recover the outstanding rent amount pursuant to Section 55(1.1) of the Act. The total outstanding rent is \$1,932.00. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security deposit held by the Landlord in partial satisfaction of the monetary award. The Landlord's Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$1,932.00
Less security deposit:	-\$340.00
TOTAL OWING:	\$1,592.00

Conclusion

I grant a Monetary Order to the Landlord in the amount of \$1,592.00. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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 Act.

Dated: May 30, 2022

Residential Tenancy Branch