



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code **CNR**

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for cancellation of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated February 1, 2022 ("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 10:31 am, in order to enable the Tenant to call into this teleconference hearing. The Landlord's agent (KG") 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 KG and I were the only ones who had called into this teleconference.

The Tenant was not present at the hearing to testify as to the method and date she served the NDRP on the Landlord. KG stated the Tenant did not serve the Landlord with the NDRP. KG stated she called the Residential Tenancy Branch ("RTB") and was provided with a courtesy copy of the NDRP. KG stated the Landlord wanted to proceed with the hearing notwithstanding the Tenant did not serve the Landlord with the NDRP. 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 Tenant

Rules 7.1, 7.3 and 7.4 of the *Residential Tenancy Branch Rules of Procedure* (“Rules”) 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, pursuant to Rule 7.3, the Tenant’s application is dismissed without leave to reapply. Prior to the hearing, the Tenant submitted a copy of the 10 Day Notice and a written submission. Pursuant to Rule 7.4, I will not consider the Tenant’s written submissions, but I will accept into evidence the copy of the 10 Day Notice submitted by the Tenant (“Tenant’s 10 Day Notice”).

Preliminary Issue – Amendment to Increase Monetary Claim for Unpaid Rent

KG testified the 10 Day Notice stated the Tenant owed the Landlord for rental arrears of \$22,400.00 as of February 1, 2022 for the months of December 2020 through to February 2022. KG stated the Tenant is still in possession of the rental unit. KG stated the Tenant did not pay the rent for March through May 2022 inclusive and has accrued an additional \$4,800.00 in rental arrears. KG requested that I amend the amount claimed by the Landlord from the Tenant for rental arrears be increased to \$27,200.00.

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 to occupy the rental unit after the effective date of the 10 Day Notice, she 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 \$27,200.00.

Preliminary Matter – Submission of Evidence

During the hearing I noted that the Tenant's 10 Day Notice did not comply with the form and content requirements of section 52 of the Act because it was not signed by the Landlord. KG stated the 10 Day Notice she served on the Tenant on February 1, 2022 was signed by her on behalf of the Landlord and stated that the Tenant must have altered the Notice. KG requested the opportunity to submit a copy of the 10 Day Notice the Landlord served on the Tenant ("Landlord's 10 Day Notice").

3.19 Submitting evidence after the hearing starts

No additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the arbitrator. In providing direction, the arbitrator will:

- a) specify the date by which the evidence must be submitted to the Residential Tenancy Branch directly or through a Service BC Office and whether it must be served on the other party; and
- b) provide an opportunity for the other party to respond to the additional evidence, if required.

In considering whether to admit documentary or digital evidence after the hearing starts, the arbitrator must give both parties an opportunity to be heard on the question of admitting such evidence.

As the Tenant did not attend the hearing, I was unable to give the Tenant the opportunity of being heard regarding admission of a copy of the 10 Day Notice into evidence. Based on KG's testimony that the 10 Day Notice served on the Tenant was signed, I will allow the KG to upload a copy of the Notice so that I can examine it to see if it complies with the form and content requirements of section 52 of the Act.

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 Landlord's claims for an Order of Possession and Monetary Order pursuant to section 55 of the Act and my findings are set out below.

KG testified the tenancy commenced on February 1, 2020, with a fixed term ending January 31, 2021, with rent of \$1,600.00 payable on the 1st day of each month. KG stated the Tenant paid a security deposit of \$800.00 and a pet damage deposit of \$800.00. KG stated the Landlord is holding the deposits in trust for the Tenant.

KG stated the Landlord served the 10 Day Notice on the Tenant in-person on February 1, 2022. KG stated the Tenant owed the Landlord for rental arrears of \$22,400.00 as of February 1, 2022. KG stated the Tenant had not paid rent for March through May 2022 and the Tenant now owes the Landlord rental arrears of \$27,200.00 calculated as follows:

| Date | Rent Owed | Paid | Balance |
|--------------|--------------------|-------------------|--------------------|
| 01-Dec-20 | \$1,600.00 | \$0.00 | \$1,600.00 |
| 01-Jan-21 | \$1,600.00 | \$0.00 | \$3,200.00 |
| 07-Jan-21 | | \$1,600.00 | \$1,600.00 |
| 01-Feb-21 | \$1,600.00 | \$0.00 | \$3,200.00 |
| 01-Mar-21 | \$1,600.00 | \$0.00 | \$4,800.00 |
| 01-Apr-21 | \$1,600.00 | \$0.00 | \$6,400.00 |
| 01-May-21 | \$1,600.00 | \$0.00 | \$8,000.00 |
| 01-Jun-21 | \$1,600.00 | \$0.00 | \$9,600.00 |
| 01-Jul-21 | \$1,600.00 | \$0.00 | \$11,200.00 |
| 01-Aug-21 | \$1,600.00 | \$0.00 | \$12,800.00 |
| 01-Sep-22 | \$1,600.00 | \$0.00 | \$14,400.00 |
| 01-Oct-22 | \$1,600.00 | \$0.00 | \$16,000.00 |
| 01-Nov-21 | \$1,600.00 | \$0.00 | \$17,600.00 |
| 01-Dec-21 | \$1,600.00 | \$0.00 | \$19,200.00 |
| 01-Jan-22 | \$1,600.00 | \$0.00 | \$20,800.00 |
| 01-Feb-22 | \$1,600.00 | \$0.00 | \$22,400.00 |
| 01-Mar-22 | \$1,600.00 | \$0.00 | \$24,000.00 |
| 01-Apr-22 | \$1,600.00 | \$0.00 | \$25,600.00 |
| 01-May-22 | \$1,600.00 | \$0.00 | \$27,200.00 |
| Total | \$28,800.00 | \$1,600.00 | \$27,200.00 |

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.

Sections 46 of the Act states:

- 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.

KG testified the Landlord served the 10 Day Notice on the Tenant's in-person on February 1, 2022. Pursuant to section 46(4) of the Act, the Tenant had 5 days, or February 6, 2022, to make an application for dispute resolution to dispute the 10 Day Notice. The records of the RTB disclose the Application was made on February 4, 2022. As such, the Application was made within the 5-day dispute period required by section 46(4) of the Act

The undisputed testimony of KG was the Tenant owed the Landlord rental arrears of \$22,400.00 as of February 1, 2022 and total rental arrears of \$27,200.00 from December 2020 to May 2022 inclusive as set out above. I find the Landlord had cause to end the tenancy pursuant to the 10 Day Notice.

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 noted above, I reviewed the Tenant's 10 Day Notice and found it did not comply with the form and content requirements of section 52 of the Act because it has not been signed by the Landlord. I have reviewed the Landlord's 10 Day Notice that KG uploaded to the RTB Service Portal after the hearing and I found the following discrepancies:

1. on page 1, the box under the heading "last name" for the Landlord is blank in the Tenant's 10 Day Notice whereas the name of the Landlord, followed by (Agent), appears in the box under the heading "last name" for Landlord in the Landlord's 10 Day Notice;
2. on page 1, the name of the Agent appears in the box under the heading "name of landlord/agent" in the Tenant's 10 Day Notice whereas the name of the Landlord and the Agent appears in the box under the heading "name of Landlord/agent" in the Landlord's 10 Day Notice;
3. on page 1, the Tenant's 10 Day Notice is dated *01-Feb-2022* in the Tenant's 10 Day Notice whereas the Landlord's 10 Day Notice is dated *20-Jan-2022* in the Landlord's 10 Day Notice; and
4. on page 2, the Tenant's 10 Day Notice states \$24,750.00 was owed for rental arrears as of *01-Feb-2022* whereas the Landlord's 10 Day Notice states that \$22,750 was owed for rental arrears as of *01-Nov-2020*.

[emphasis in italics added]

In particular, I note that the Landlord's 10 Day Notice claims the Tenant owed \$24,750.00 as of November 1, 2020, which was 14 months before the KG testified she served the Tenant with the Landlord's 10 Day Notice on February 1, 2022. I find, on a balance of probabilities, that it is likely the Landlord's 10 Day Notice was created after the hearing on May 12, 2022. As such, I do not accept the Landlord's 10 Day Notice and find the 10 Day Notice served on the Tenant was the Tenant's 10 Day Notice which does not meet the form and content requirements of section 52. As such, I order the 10 Day Notice cancelled. The tenancy continues until ended in accordance with the Act.

As I have found the 10 Day Notice did not comply with the form and content requirements of section 52, the Landlord is not entitled to a Monetary Order for the rental arrears pursuant to section 55(1.1) of the Act.

Conclusion

The 10 Day Notice is cancelled. The Tenancy continues until ended in accordance with the Act.

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: May 20, 2022

Residential Tenancy Branch