



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding City2City Real Estate Services
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR, RP, RR, FFT**

Introduction

This hearing dealt with the Tenants' 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;
2. An Order for repairs to the unit, I have contacted the Landlord in writing to make repairs but they have not been completed pursuant to Section 32 of the Act;
3. An Order to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to Section 65 of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Manager, AM, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenants 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 Property Manager and I were the only ones who had called into this teleconference. The Landlord's Property Manager was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord's Property Manager that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord's Property Manager testified that he was not recording this dispute resolution hearing.

The Landlord's Property Manager served the 10 Day Notice on the Tenants on February 2, 2022 by placing the document in their mailbox. The Tenants applied for dispute resolution on February 2, 2022, but did not attend the hearing. I find that the 10 Day Notice was deemed served on the Tenants on February 5, 2022 pursuant to Sections 88(f) and 90(d) of the Act.

The Tenants served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on February 13, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenants uploaded the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the NoDRP package five days after mailing on February 18, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord's Property Manager served the Tenants with his evidence via registered mail on April 8, 2022. The Landlord's Property Manager uploaded the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord's Property Manager subsequently was alerted on April 13, 2022 that the Tenants had vacated the rental unit. He then sent his evidence by email to the Tenants to ensure their receipt before this hearing date. I find that the Landlord's evidence was sufficiently served on the Tenants on April 16, 2021 pursuant to Section 71(2) of the Act.

Preliminary Matter

Tenants' Application

The Tenants did not attend this hearing, and they did not upload any evidentiary documents in support of their claims. As I have no evidence from the Tenants about their claimed matters, I dismiss their dispute resolution application without leave to re-apply.

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 \$3,000.00 to \$9,000.00 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's Property Manager testified that this tenancy began as a fixed term tenancy on December 1, 2021. The fixed term was to end on November 30, 2022, then the tenancy would have continued on a month-to-month basis. Monthly rent is \$3,000.00 payable on the first day of each month. A security deposit of \$1,500.00 and a pet damage deposit of \$500.00 were collected at the start of the tenancy and are still held by the Landlord.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenants owed \$3,000.00 in outstanding rent on February 1, 2022. The effective date of the 10 Day Notice was February 12, 2022.

The Landlord said the Tenants did not pay rent on February 1, 2022. On March 1, 2022, the Tenants sent an etransfer for \$2,000.00. On March 3, 2022, the Tenants cancelled the etransfer.

The downstairs tenant asked for the utilities bill on April 13, 2022 as the utilities account was in the Tenants' names. The Landlord stated he found out that the Tenants had moved out on March 15, 2022 without any notice to the Landlord.

The Landlord's Property Manager no longer needs an Order of Possession as the Tenants have vacated the rental unit, but the Landlord's Property Manager is seeking a Monetary Order for February, March and April's unpaid rent in the amount of \$9,000.00.

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

This hearing was conducted pursuant to Rules of Procedure 7.3, in the Tenants' 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.*

Section 46 of the Act outlines how a tenancy can end for unpaid rent:

Landlord's notice: non-payment of rent

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].*

...

(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 by that date.*

...

I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The Tenants applied for dispute resolution on February 2, 2022 within the 5 days after receiving the 10 Day Notice. The Landlord's Property Manager provided testimony about the unpaid rent situation for this tenancy. I find the Tenants have not paid rent when it was due and are deeply in arrears. The total outstanding rent amount is \$9,000.00. The Tenants did not attend this hearing to give evidence about the outstanding rent amount although provided notice of this hearing date. Pursuant to Section 46(5)(a) of the Act, I find that the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date, which was February 12, 2022. I uphold the Landlord's 10 Day Notice.

I must consider if the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent. Section 55 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 have upheld the Landlord's 10 Day Notice and, although the Landlord no longer requires an Order of Possession, 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 amount is \$9,000.00. 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's Property Manager is authorized to retain the security and pet damage deposits held by the Landlord's Property Manager in partial satisfaction of the monetary award. The Landlord's Property Manager's Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$9,000.00
Less security deposit:	-\$1,500.00
Less pet damage deposit:	-\$ 500.00
TOTAL OWING:	\$7,000.00

Conclusion

I grant a Monetary Order to the Landlord in the amount of \$7,000.00. 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 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 06, 2022

Residential Tenancy Branch