



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEPPLE ENTERPRISE LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated March 9, 2022; and to recover the \$100.00 cost of his Application filing fee.

The Tenant was provided with a copy of the Notice of a Dispute Resolution Hearing on March 25, 2022; however, the Tenant did not attend the teleconference hearing scheduled for July 8, 2022, at 11:00 a.m. (Pacific Time). The phone line remained open for 15 minutes and was monitored throughout this time. The only person to call into the hearing was the respondent Landlord's Agent, M.V. ("Agent"), who indicated that she was ready to proceed, and who gave affirmed testimony.

Rule 7.1 of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules") states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Landlord's Agent and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 11:00 a.m. on July 8, 2022, as scheduled.

Rule 7.3 states that 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 reapply. The teleconference line remained open for 15 minutes; however, neither the Applicant nor an agent acting on his behalf attended to provide any evidence or testimony for my consideration. As a result, and following a ten-minute waiting period, and pursuant to Rule 7.3, I **dismiss the Tenant's Application wholly without leave to reapply.**

The Agent said that the Tenant served her with the wrong documentation for this hearing, and therefore, she was unable to upload her evidence to the RTB. She said she had to find out what the correct numbers were, and that it was difficult to reach someone at the RTB.

The Agent said a building manager served the Tenant with the Landlord's evidentiary submissions in person on July 6, 2022. I advised the Agent that as the Respondent, they are required to serve the Applicant with their evidence at least seven days prior to the hearing. The Agent said she was aware of that, but that since the Tenant had served the Landlord with the wrong documents that had the wrong codes in it, the Agent said she was delayed in responding promptly.

Pursuant to section 66 of the Act, and Policy Guideline #36, I find that the Agent had exceptional circumstances that prevented her from serving the Tenant and submitting the evidence to the RTB in compliance with the Act and Rules. I find that the Agent had a *bona fide* intent to comply with the time limit, and took reasonable and appropriate steps to comply with the time limit. Accordingly, I find that it is reasonable and appropriate in these circumstances to consider the Landlord's evidence before me.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about it. During the hearing, the Agent had the opportunity to provide her evidence orally and to ask questions. I reviewed all oral and written evidence before me that met the requirements of the RTB Rules; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Agent provided the Landlord's email address in the hearing, but the Tenant did not provide an email address in his Application; therefore, the Decision will be sent to him at the rental unit mailing address. The Agent confirmed her understanding that the Decision would be emailed to the Landlord and mailed to the Tenant, and that any Orders would be sent to the appropriate Party in this manner.

I advised the Agent that she was not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?

- Is the Landlord entitled to an order of possession?

Background and Evidence

The Agent confirmed the details of the tenancy, saying that it began on May 1, 2020, with a monthly rent of \$450.00 due on the first day of each month. The Agent said the Tenant paid a security deposit of \$225.00 and no pet damage deposit. The Agent confirmed that the Landlord still holds the security deposit in full.

The Agent said she served the Tenant with the 10 Day Notice, which was signed and dated March 9, 2022, and which has the rental unit address. The Agent confirmed that the 10 Day Notice was served by placing a copy on the rental unit door on March 9, 2022, with an effective vacancy date of March 20, 2022, which is automatically corrected by the Act to March 22, 2022. The 10 Day Notice was served on the grounds that the Tenant failed to pay the Landlord \$5,780.00 in rent that was owing on March 1, 2022.

The Agent directed me to a ledger of the Tenant's rent payments since May 1, 2020. This ledger shows that the Tenant paid rent in full, from May through August 2020; however, from September 2020 through March 2021, he only paid part of his rent. From April 2021 through to July 2022, the Tenant has not paid any rent to the Landlord.

However, I was unable to determine how the Landlord came to the total owing by the Tenant on the spreadsheet, as I put the numbers into an electronic spreadsheet and my total was different than that of the Landlord.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Section 46 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 also states that the 10 Day Notice must comply with section 52, as to form and content.

I have dismissed the Tenant's Application, because the Tenant did not attend the hearing to dispute the Landlord's evidence about the validity of the 10 Day Notice.

When a tenant applies to cancel an eviction notice, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. I must grant the landlord an order of possession, if I dismiss the tenant's application, and if the eviction notice is compliant with the Act, as to form and content.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice on March 12, 2022, three days after it was posted on the rental unit door. I find that the 10 Day Notice is compliant with section 52 of the Act, as to form and content.

I dismissed the Tenant's Application, and I find that the 10 Day Notice is consistent with the Act. As such, and **pursuant to section 55** of the Act, I **award the Landlord** with an **Order of Possession** of the residential property, effective two days after service of the Order on the Tenant.

Section 55 (1.1) states that if a tenant applies to dispute a landlord's notice to end a tenancy, then the director must grant an order requiring the payment of the unpaid rent by the tenant, if the notice complies with section 52 of the Act, and if the tenant's application is dismissed.

I find that the 10 Day Notice complies with section 52 of the Act, as to form and content. Further, I uphold the Landlord's 10 Day Notice to end the tenancy. Accordingly, I find that the Landlord is eligible for a monetary order pursuant to the Tenants' Application

However, based on the above, I cannot make a finding on the amount of rent owed to the Landlord by the Tenant; therefore, **I cannot grant the Landlord a monetary order** in this regard. Rather, I encourage the Landlord to apply for dispute resolution claiming against the security deposit for a monetary order for rent arrears. The Landlord should note the deadlines set out in section 38 of the Act in this regard.

Conclusion

The Tenant has not paid any rent for more than the last 16 months and he did not attend the teleconference hearing scheduled pursuant to his Application; therefore, the **Tenant's Application is dismissed wholly without leave to reapply.**

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession** effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible.

Should the Tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: July 13, 2022

Residential Tenancy Branch