



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACE REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDCT, OLC, LRE, MNRT, 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 cancelling the 10 Day Notice to End Tenancy for Unpaid Rent dated March 30, 2022 ("10 Day Notice");
- a Monetary Order of \$200.00 for damage or compensation under the Act;
- an Order for the Landlord to Comply with the Act or tenancy agreement;
- an Order suspending or restricting the Landlord's right to enter;
- a Monetary Order for the cost of emergency repairs; and
- recovery of the \$100.00 cost of his Application filing fee.

The Tenant was advised that the Notice of Hearing documents were available for pick up at the Residential Tenancy Branch on April 20, 2022; however, the Tenant did not attend the teleconference hearing scheduled for July 7, 2022, at 1:30 p.m. (Pacific Time). The phone line remained open for over thirteen minutes and was monitored throughout this time. The only persons to call into the hearing were two agents for the Landlord, M.J. and M.D. ("Agents"), who indicated that they were ready to proceed, and who gave affirmed testimony. No one attended on behalf of the Tenant. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Agents.

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Landlord's Agents 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 1:30 p.m. on July 7, 2022, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for over 13 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 pursuant to Rule 7.3, I **dismiss the Tenant's Application wholly without leave to reapply.**

Preliminary and Procedural Matters

The Tenant provided the Agents' email address in the Application and they confirmed this in the hearing. The Tenant did not provide an email address with his Application, nor did the Agents have one for him. As such, the Decision will be emailed to the Agents and mailed to the Tenant, and any Orders will be sent to the appropriate Party in this manner.

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

No one submitted a copy of the tenancy agreement, but in the hearing the Agents advised that the periodic tenancy began on April 1, 2021, with a monthly rent of \$1,600.00, due on the first day of each month. The Agents said that the Tenant did not pay the Landlord a security deposit, nor a pet damage deposit.

The Tenant had submitted a copy, and the Agents confirmed the details of the 10 Day Notice, saying that it was signed and dated March 30, 2022, it has the rental unit address. The 10 Day Notice was served by posting it on the door of the rental unit on March 30, 2022. It has an effective vacancy date of April 11, 2022, which is automatically corrected by the Act to April 13, 2022. The 10 Day Notice was served on the grounds that the Tenant failed to pay \$6,400.00 in rent to the Landlord that was owing on March 1, 2022.

In the hearing, the Agents said:

The owner gave us his file, because she's been having a hard time getting rent out of [the Tenant]. We started in November [2021], and when we first came, we got November's payment out of him, but he has refused to pay any thing else

since then. He said: 'I'm not paying you guys, because I was supposed to pay the owner'. We tried our best to make it work with him, but at this point, he owes.\$12800.00.

The Agents said that the Tenant owes the following rent to the Landlord:

| Date Rent Due | Amount Owing | Amount Received | Amount Owing |
|----------------------|---------------------|------------------------|---------------------|
| Dec. 1/21 | \$1,600.00 | \$0.00 | \$1,600.00 |
| Jan. 1/22 | \$1,600.00 | \$0.00 | \$1,600.00 |
| Feb. 1/22 | \$1,600.00 | \$0.00 | \$1,600.00 |
| March 1/22 | \$1,600.00 | \$0.00 | \$1,600.00 |
| April 1/22 | \$1,600.00 | \$0.00 | \$1,600.00 |
| May 1/22 | \$1,600.00 | \$0.00 | \$1,600.00 |
| June 1/22 | \$1,600.00 | \$0.00 | \$1,600.00 |
| July 1/22 | \$1,600.00 | \$0.00 | \$1,600.00 |
| | TOTAL | | \$12,800.00 |

Analysis

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

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.

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 – first - I dismiss the tenant's application, and second, if the eviction notice is compliant with the Act, as to form and content.

The onus to prove their case is usually on the person who applies for dispute resolution.

However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel an eviction notice. As such, the burden of proof is on the Landlord for this proceeding.

I find that the Tenant has failed to pay the Landlord the rent he owes in the last eight months of the tenancy.

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 April 3, 2022, three days after it was posted on the rental unit door.

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. In the hearing, the Agents said that the Landlord is owed \$12,800.00 in unpaid rent as of July 1, 2022.

Based on the above, I find that the amount of rent outstanding listed on the 10 Day Notice of \$6,400.00 is incorrect, as it was based on outstanding rent amount owing at the time it was served on March 30, 2022. Pursuant to Rule 4.2 and section 64 (3) (c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay his monthly rent owing. I find no prejudice to the Tenant, as he is aware of how much rent he has or has not paid, so he could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after correcting the Landlord's original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$6,400.00 to \$12,800.00.

Based on the above, I award the Landlord an **Order of Possession pursuant to section 55** of the Act. As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenant has not paid rent for the last eight months, the Order of Possession will be **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 following circumstances apply:

- (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;

I find that the 10 Day Notice complies with section 52 of the Act, as to form and content, and I have dismissed the Tenant's Application wholly. 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. I grant the Landlord a **Monetary Order** of **\$12,800.00** from the Tenant, pursuant to sections 46, 55, and 67 of the Act.

Conclusion

The Tenant has not paid rent for more than the last eight months, and he failed to attend the teleconference hearing that he scheduled, therefore, the **Tenant's Application is dismissed 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.

I grant the Landlord a Monetary Order under section 67 of the Act from the Tenant of **\$12,800.00**. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) 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: July 07, 2022

Residential Tenancy Branch