



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE; CNR; CNC

Introduction

This hearing dealt with the tenant's first application, filed on April 2, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46; and
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70.

This hearing dealt with the tenant's second application, filed on April 19, 2022, pursuant to the *Act* for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 13, 2022 ("10 Day Notice"), pursuant to section 46.

This hearing also dealt with the tenant's third application, filed on April 8, 2022, pursuant to the *Act* for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated April 7, 2022 ("1 Month Notice"), pursuant to section 47.

The tenant did not attend this hearing, which lasted approximately 32 minutes. The landlord and the landlord's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 9:30 a.m. and ended at 10:02 a.m. I monitored the teleconference line throughout this 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, the landlord's agent, and I were the only people who called into this teleconference.

The landlord intended to call a witness, who was excluded from the outset of this hearing. The witness did not return to testify. The landlord's agent confirmed that the witness intended to provide testimony as per her statement regarding claims not related to or relevant to this application, so her testimony was not required.

The landlord said that she owns the rental unit and confirmed the rental unit address. The landlord confirmed that her agent, who is her daughter, had permission to represent her at this hearing.

The landlord's agent provided her name and spelling. She provided her email address for me to send this decision to the landlord after the hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* does not permit recording of this hearing by any party. At the outset of this hearing, the landlord and her agent both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to the landlord and her agent. I informed them that I could not provide legal advice to them. They had an opportunity to ask questions, which I answered. They did not make any adjournment or accommodation requests.

The landlord's agent confirmed receipt of the tenant's three applications for dispute resolution hearing packages. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's three applications.

The landlord's agent stated that the tenant was served with the landlord's evidence package on July 12, 2022, by way of posting to his rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's evidence package on July 15, 2022, three days after its posting.

The landlord's agent stated that the tenant was served with the landlord's 10 Day Notice on April 13, 2022, by way of registered mail. The landlord provided a Canada Post receipt and tracking number with this application. The landlord's agent said that the effective move-out date on the notice is April 28, 2022. In his second application, the tenant indicated that he received the landlord's 10 Day Notice on April 19, 2022, by way of registered mail. In accordance with sections 88 and 90 of the *Act*, I find that the

tenant was deemed served with the landlord's 10 Day Notice on April 18, 2022, five days after its registered mailing.

The landlord's agent stated that the landlord was seeking unpaid water bills and damages from the tenant. I informed her that the landlord did not file an application for same, to be heard together with the tenants' three applications at this hearing. I notified her that the landlord was at liberty to file an application for same, if she wanted to pursue this matter in the future. She confirmed her understanding of same.

Preliminary Issue – Dismissal of Tenant's Three Applications

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

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

In the absence of any appearance by the tenant, I order the tenant's three applications dismissed in their entirety, without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

At the outset of this hearing, the landlord's agent confirmed that the tenant vacated the rental unit on July 22, 2022. She stated that the landlord did not require an order of possession against the tenant because the landlord took back possession of the rental unit and changed the locks. Accordingly, I do not issue an order of possession to the landlord.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to a monetary order for unpaid rent without filing a separate application, provided that the notice meets the requirements of section 52 of the *Act*.

Issue to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The landlord's agent stated the following facts. This tenancy began on March 1, 2021 and ended on July 22, 2022. Monthly rent in the amount of \$1,850.00 was payable on the first day of each month. A security deposit of \$975.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by the tenant and the landlord's strata manager, who was her agent, and was also named as a landlord on the agreement. A copy of the tenancy agreement was provided for this hearing.

The landlord's agent testified regarding the following facts. The 10 Day Notice was issued by the landlord to the tenant, for unpaid rent of \$1,850.00 due on April 1, 2022. The tenant failed to pay rent of \$1,850.00 per month from April to July 2022, inclusive, totalling \$7,400.00. The landlord seeks a monetary order of \$7,400.00 for unpaid rent, against the tenant.

Analysis

The landlord provided undisputed evidence, as the tenant did not attend this hearing. The tenant failed to pay the full rent due on April 1, 2022, within five days of being deemed to have received the 10 Day Notice. The tenant filed an application to dispute the 10 Day Notice, pursuant to section 46(4) of the *Act*. However, the tenant did not appear at this hearing in order to provide his evidence.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days led to the end of this tenancy on April 28, 2022, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by April 28, 2022. The tenant did not vacate the rental unit until July 22, 2022. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month, in this case. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$1,850.00 per month, totalling \$7,400.00, for four months from April to July 2022. Therefore, I find that the landlord is entitled to a monetary order of \$7,400.00 in unpaid rent from the tenant.

Although this hearing occurred on July 25, 2022, I find that the landlord is entitled to one full month's rent for July 2022 of \$1,850.00. The tenant did not vacate the rental unit until July 22, 2022. Rent is due on the first day of each month, July 1, 2022.

The landlord continues to hold the tenant's security deposit of \$975.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$975.00 in partial satisfaction of the monetary award.

Conclusion

The tenant's three applications are dismissed in their entirety, without leave to reapply.

The landlord is not issued an order of possession against the tenant.

I order the landlord to retain the tenant's entire security deposit of \$975.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$7,400.00 against the tenant. The tenant must be served with this Order. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 25, 2022

Residential Tenancy Branch