



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, OLC

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The tenant applied on April 12, 2022 for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated April 11, 2022 (the 10 Day Notice);
- an order to suspend or set conditions on the landlord's right to enter the rental unit or site; and
- an order for the landlord to comply with the Act, regulation, and/or tenancy agreement.

The hearing began at 11:00 a.m. The tenant did not attend, though the teleconference line remained open for 10 minutes. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; he was also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Rule 7.3 permits an arbitrator to conduct a hearing in the absence of any party, or dismiss the application with or without leave to re-apply.

Preliminary Matters

The landlord testified that the tenant vacated the rental unit in June 2022, and that the landlord changed the locks on July 5, 2022. The landlord testified he is still seeking an order of possession, along with unpaid rent.

The landlord testified he served responsive evidence on the tenant by sending it registered mail to the rental unit on July 11, 2022.

Section 88(c) of the Act states that documents may be served on a person by sending them by ordinary or registered mail to the address at which the person resides. As the landlord testified that the tenant vacated the rental unit in June 2022, I find the landlord did not serve his responsive evidence on the tenant in accordance with section 88 of the Act. Therefore, I will not consider the landlord's documentary evidence in my decision.

As the landlord has testified the tenant vacated the rental unit, the tenant's application is dismissed on this basis.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, despite the fact that this is the tenant's application, the landlord bears the evidentiary burden to prove that the Notice is valid.

I note that the landlord testified that the tenant vacated the rental unit in June 2022. Section 44 of the Act provides that a tenancy ends if the tenant vacates or abandons the rental unit. Despite this, the application must proceed, as section 55(1.1) of the Act requires an arbitrator to grant an order requiring the payment of the unpaid rent. As such, despite the tenancy having ended, I must assess the validity of the Notice.

Issue to be Decided

Is the landlord entitled to an order of possession and a monetary order due to non-payment of rent?

Background and Evidence

The landlord confirmed the following particulars regarding the tenancy. It began August 5, 2020; rent was \$1,600.00, due on the first of the month; and the tenant paid a security deposit of \$800.00, which the landlord still holds.

A copy of the tenancy agreement is submitted as evidence, as is a copy of the 10 Day Notice.

The landlord testified he served the 10 Day Notice on the tenant by posting it to the door on April 11, 2022. The Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form. The 10 Day Notice indicates the tenancy is ending because the tenant failed to pay rent of \$5,200.00 due on April 16, 2022. The landlord indicated that the date of April 16, rather than April 1, was an error.

The landlord testified that after serving the 10 Day Notice on the tenant, he realized the amount owing was incorrect, so served an amended copy of the 10 Day Notice on the tenant on April 26, 2022 by posting it to the door, accompanied by a letter explaining the error, and that the correct amount owing was \$3,600.00.

The landlord testified the tenant owes outstanding rent as follows:

Month (2022)	Rent due	Rent paid	Outstanding amount
January	\$1,600.00	\$1,000.00	\$600.00
February	\$1,600.00	\$600.00	\$1,000.00
March	\$1,600.00	\$1,200.00	\$400.00
April	\$1,600.00	\$0.00	\$1,600.00
May	\$1,600.00	\$0.00	\$1,600.00
June	\$1,600.00	\$0.00	\$1,600.00
		Total	\$6,800.00

The landlord testified that he received a letter from BC Hydro stating that the tenant had closed his account as of April 30, 2022, so the bill had reverted to the landlord's name. The landlord stated he "had to make those payments," but provided no further details.

Analysis

Pursuant to section 46 (1) of the Act, 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.

I accept the landlord's undisputed affirmed testimony that the tenant owes outstanding rent in the amount of \$6,800.00, that the landlord's errors on the 10 Day Notice were accidental, and that he informed the tenant of the rent amount error, in writing, once he discovered it.

Based on the testimony of the landlord, I find he served the 10 Day Notice on the tenant in accordance with section 88 of the Act. As the tenant's application indicates the Notice was received on April 11, 2022, I find the tenant received it on that date.

I find the 10 Day Notice meets the form and content requirements of section 52.

Section 55(1) of the Act provides that when a tenant's application to cancel a notice to end tenancy is dismissed, and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, an arbitrator must grant an order of possession to the landlord. Therefore, having dismissed the tenant's application to cancel the 10 Day Notice, and finding that the Notice meets the form and content requirements of section 52, I find the landlord is entitled to an order of possession.

Pursuant to section 55(1.1) of the Act, I find the Landlord is entitled to a monetary award for unpaid rent in the amount of \$6,800.00.

In accordance with section 72 of the Act, I allow the landlord to retain the tenant's \$800.00 security deposit in partial satisfaction of the amount owing. The landlord is entitled to a monetary order for \$6,000.00 ($\$6,800.00 - \$800.00 = \$6,000.00$).

Conclusion

The tenant's application is dismissed.

The landlord is granted an immediate order of possession.

The landlord is granted a monetary order in the amount of \$6,000.00.

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 22, 2022

Residential Tenancy Branch