



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR CNC DRI MNRT**

Introduction

This hearing was convened as a result of the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated April 1, 2022 ("First 10 Day Notice"), pursuant to section 46;
- cancellation of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated May 27, 2022 ("Second 10 Day Notice") pursuant to section 46;
- cancellation of a One Month Notice to End Tenancy for Cause dated May 27, 2022 pursuant to section 47;
- an order to be paid back by the Landlord for the cost of emergency repairs made by the Tenants pursuant to section 67; and
- an order regarding a disputed rent increase pursuant to section 43.

The Tenants did not attend this hearing scheduled for 9:30 am. I left the teleconference hearing connection open for the entire hearing, which ended at 9:53 am, in order to enable the Tenants to call into this teleconference hearing. The Landlord, the Landlord's agent ("MM") and the Landlord's interpreter ("KU") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that the Landlord, MM, KU and I were the only ones who had called into this teleconference.

Although the Tenants were not present at the hearing to testify as to the method and date they served the NDRP on the Landlord, the Landlord acknowledged he received the NDRP in-person from the Tenants on or about April 2 or April 3, 2022. I find that the Landlord was served by the Tenants with the NDRP pursuant to the provisions of

section 89 of the Act. The Landlord acknowledged being served by the Tenants in-person with two amendments ("Amendments") to the Application, both of which were dated May 22, 2022. I find the Tenants served the Landlord with the Amendments in accordance with section 89 of the Act.

The Landlord and MM stated the Landlord was not served with any evidence by the Tenants for the Application.

MM stated she served the Landlord's evidence on the Tenants in-person on July 22, 2022.

Preliminary Matter – Effect of Non-Attendance by Tenants

Rules 7.1, 7.3 and 7.4 of the *Residential Tenancy Branch Rules of Procedure* state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

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

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Tenants did not attend the hearing before the hearing ended at 9:52 am, being more than 10 minutes after of its commencement, the Application is dismissed without leave to reapply. As the Tenants were not present at the hearing, I will not consider any of the evidence submitted by the Tenants in advance of the hearing when adjudicating the Tenants' claims to cancel the First 10 Day Notice, Second 10 Day Notice and 1 Month Notice.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession pursuant to section 55 of the Act?
- recover unpaid rent from the Tenants?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Landlord submitted into evidence a copy of the tenancy agreement. The Landlord confirmed the tenancy commenced on November 13, 2021, on a month-to-month basis, with rent of \$2,500.00 payable on the 13th day of each month. The Tenants were to pay a security deposit of \$1,250.00 by November 13, 2021. The Landlord confirmed he received the security deposit and was holding it in trust for the Tenants.

The Landlord stated he served the First 10 Day Notice on the Tenants in-person on April 1, 2022. MM stated she served the Second 10 Day Notice and the 1 Month Notice on the Tenants' door on May 27, 2022.

MM submitted into evidence a copy of the First 10 Day Notice. The First 10 Day Notice stated the Tenants had rental arrears of \$5,000.00 as of March 1, 2022. MM submitted into evidence a copy of the Second 10 Day Notice. The Second 10 Day Notice stated the Tenants had rental arrears of \$10,000.00 as of May 13, 2022.

MM submitted into evidence a copy of the 1 Month Notice which stated the cause for ending the tenancy was the Tenants were repeatedly late paying the rent. The details of the cause provided in the 1 Month Notice were:

Tenant is repeatedly late paying rent as follows:
Feb 2022, March 2022, April 2022 and May 2022

MM submitted into evidence a copy of ledger for the Tenants' rental unit and stated the Tenants had rental arrears totalling \$14,500.00 calculated as follows:

Date	Rent Owed	Paid	Balance
13-Feb-22	\$2,500.00		\$2,500.00
13-Mar-22	\$2,500.00		\$5,000.00
13-Apr-22	\$2,500.00		\$7,500.00
13-May-22	\$2,500.00		\$10,000.00
30-May-22		\$500.00	\$9,500.00
13-Jun-22	\$2,500.00		\$12,000.00
13-Jul-22	\$2,500.00		\$14,500.00
Total	\$15,000.00	\$500.00	\$14,500.00

The Landlord stated he was told the Tenants have already moved out of the rental unit on or about July 28, 2022 and left the key under the matter. The Landlord stated he has not gone to check to see if the Tenants have actually vacated the rental unit.

Analysis

1. Order of Possession

Sections 46(1) through 46(5) of the Act state:

- 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]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (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*

[emphasis in italics added]

The Landlord submitted into evidence a copy of the First 10 Day Notice and stated he served it on the Tenants in-person on April 1, 2022. Pursuant to section 46(4) of the Act, the Tenants had 5 days, or April 6, 2022, within which to make an application for dispute resolution to dispute the First 10 Day Notice. The records of the RTB Branch disclose the Tenants made their application on April 4, 2022. Accordingly, the Tenants made the Application to dispute the First 10 Day Notice within the five-day dispute period.

MM submitted into evidence a copy of the Second 10 Day Notice and stated she served it on the Tenants' door on May 27, 2022. Pursuant to section 90 of the Act, the Tenants were deemed to have received the Second 10 Day Notice on May 30, 2022. Pursuant to section 46(4) of the Act, the Tenants had 5 days, or June 4, 2022, within which to make an application for dispute resolution, or file an amendment, to dispute the Second 10 Day Notice. The records of the RTB Branch disclose the Tenants filed an amendment to dispute the Second 10 Day Notice on May 30, 2022. Accordingly, the Tenants filed an amendment to the Application to dispute the Second 10 Day Notice within the five-day dispute period.

MM submitted into evidence a copy of the 1 Month Notice and stated she served it on the Tenants' door on May 27, 2022. Pursuant to section 90 of the Act, the Tenants were deemed to have received the 1 Month Notice on May 30, 2022. Pursuant to section 46(4) of the Act, the Tenants had 10 days, or June 9, 2022, within which to make an application for dispute resolution, or file an amendment, to dispute the 1 Month Notice. The records of the RTB Branch disclose the Tenants filed an amendment to dispute the 1 Month Notice on May 30, 2022., the Tenants filed an amendment to the Application to dispute the 1 Month Notice. Accordingly, the Tenants filed an amendment to dispute the 1 Month Notice within the 10-day dispute period.

The First 10 Day Notice stated the Tenants had rental arrears of \$5,000.00 as of March 1, 2022. The Second 10 Day Notice stated the Tenants had rental arrears of \$10,000.00 as of May 13, 2022. I accept the undisputed testimony of the Landlord and MM in its

entirety. I find the Tenants had rental arrears of \$5,000.00 as of March 13, 2022 and rental arrears of \$10,000.00 in rental arrears as of May 13, 2022.. I also find that, as of the date of this hearing, the Tenants have rental arrears of \$14,500.00 covering the period February through July 2022. Section 26(1) of the Act states:

- 26 (1) 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.

As such, the Tenants were responsible for paying rent when it was due. Based on the foregoing, I find the First 10 Day Notice and Second 10 Day Notice were issued for a valid reasons. As noted above, I have dismissed the Application. Sections 55(1) and 55(1.1) of the Act state:

- 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.

Section 55(1) of the Act provides that, where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the Act, then I must grant the landlord an Order of Possession. I have reviewed the First 10 Day Notice and Second 10 Day Notice and find they comply with the form and content requirements of section 52 of the Act. Pursuant to section 55(1) of the Act, the Landlord is entitled to an Order of Possession on the Tenants. It is unclear whether the Tenants have actually vacated the rental unit. Based on the

above, I grant the Landlord an Order of Possession pursuant to section 55(1) of the Act. Pursuant to section 68(2) of the Act, I order the tenancy ended on July 29, 2022.

As I have found cause for ending the Tenancy pursuant to the First 10 Day Notice and Second 10 Day Notice, it is unnecessary for me to consider whether the Landlord is entitled to an Order of Possession for cause pursuant to the 1 Month Notice.

2. Monetary Order for Rental Arrears

As stated above, I have found the Tenants had rental arrears of \$5,000.00 as of March 13, 2022 and \$10,000.00 as of May 13, 2022. I have also found the Tenants had rental arrears of \$14,500.00 covering the period from February through July 2022. The Tenants knew, or ought to have known, that they were responsible for paying rent to the Landlord after the Second 10 Day Notice until they vacated the rental unit. As such, pursuant to section 55(1.1) of the Act, I order the Tenants to pay \$14,500.00, representing unpaid rental arrears from February 13, 2022 to July 13, 2022, as specified above. Pursuant to section 72(2) of the Act, the Landlord may retain the security deposit of \$1,250.00 in partial satisfaction of the Monetary Order made above.

Conclusion

The Application is dismissed in its entirety without leave to reapply.

I order the Tenants deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and the attached Order of Possession by the Landlord. Should the Tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 55(1.1) of the Act, I order the Tenants pay the Landlord \$13,250.00 representing the following:

Description	Amount
Rental Arrears from February 13, 2022 to July 13, 2022	\$14,500.00
Less Tenant's Security Deposit	-\$1,250.00
Total	\$13,250.00

This Monetary Order must be served by the Landlord on the Tenants and may be enforced in Provincial 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 30, 2022

Residential Tenancy Branch