



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, OLC, MNDCT, RP**

Introduction

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

- for cancellation of three Ten Day Notices to End Tenancy for Unpaid Rent and/or Utilities dated January 7, February 3, and March 4, 2022 (collectively the "10 Day Notices") pursuant to section 46;
- an order for the Landlord to comply with the Act, *Residential Tenancy Regulations* and/or tenancy agreement pursuant to section 62;
- an order for the Landlord to complete repairs to the rental unit pursuant to section 32; and
- an order for the Landlord to return of the security deposit and pet damage deposit to the Tenants pursuant to section 38.

The original hearing of the Application was held on April 7, 2022 at 11:00 am ("Original Hearing"). The Landlord and one of the two Tenants ("SN") attended the Original Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. There was insufficient time to take all the parties' testimony and allow rebuttals at the Original Hearing. Pursuant to Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* ("RoP"), I adjourned the hearing ("Adjourned Hearing") and issued a decision dated April 7, 2022 ("Interim Decision"). The Interim Decision stated that Landlord and Tenants were not permitted to serve each other or file any additional evidence with the Residential Tenancy Branch ("RTB"). The Interim Decision, and Notices of Dispute Resolution Proceeding for the Adjourned Hearing, scheduled for July 22, 2022 at 1:30 pm, were served on the parties by the RTB.

The Landlord and SN attended the Original Hearing and Adjourned Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the Original Hearing, SN stated she served the Landlord with the Notice of Dispute Resolution Proceeding for the Original Hearing ("Original NDRP") and her evidence on the Landlord by registered mail but she could not remember the date of mailing. The Tenant provided the Canada Post tracking number to corroborate her testimony of service on the Landlord. The Landlord acknowledged she received the Original NDRP on January 24, 2022 but disputed the Tenants served their evidence with the Original NDRP. I find the Original NDRP was served by the Tenant on the Landlord in accordance with section 89 of the Act.

Preliminary Matter – Service of Tenants' Evidence on Landlord

The Landlord disputed the Tenants served her with any evidence even though SN stated the Tenants' evidence was served with the Original NDRP. The records of the RTB indicate that, other than for the copies of the two 10 Day Notices uploaded by the Tenants on February 3 and March 4, 2022, the Tenants uploaded their evidence to the RTB dispute resolution portal on January 9, 2022 when they made the Application. The Landlord admitted she received the Original NDRP. I find it more likely than not, that other than for the copies of the two 10 Day Notices uploaded on February 3 and March 4, 2022, the Tenants served their evidence on the Landlord at the time the Tenants served the Original NDRP on the Landlord. As such, I find the Tenants' evidence was served by the Tenants on the Landlord in accordance with section 88 of the Act. As the Landlord prepared and served the two 10 Day Notices the Tenants uploaded to the RTB on February 3 and March 4, 2022, I will also admit those two 10 Day Notices into evidence.

Preliminary Matter – Service of Landlord's Evidence on Tenants

The Landlord stated she never served any evidence on the Tenants because the Tenants did not provide their forwarding address to her. However, the address for service of documents on the Tenants for the Application was stated on page 2 of the Original NDRP. Rule 3.15 of the *Residential Tenancy Branch Rules of Procedure* states:

3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

See also Rules 3.7 and 3.10.

The Landlord failed to comply with Rule 3.15. As such, the Landlord's evidence is not admissible for the Original Hearing or Adjourned Hearing. I told the Landlord she could give oral testimony regarding the contents of her excluded evidence.

Preliminary Matter – Dismissal of Tenants Claim

The parties agreed to the Tenants vacated the rental unit on March 15, 2022. As such, the Tenants' claim to (i) dispute the 10 Day Notice; (ii) for an order the Landlord comply with the Act, Regulations and/or tenancy agreement; and (iii) for the Landlord to complete repairs to the rental unit (collectively the "Claims") are no longer required. As such, I sever the Claims from the Application and dismiss the Claims without leave to reapply.

Issues to be Decided

- Are the Tenants entitled to the return of their security and pet damage deposits?
- Is the Landlord entitled to a monetary order for unpaid rent pursuant to section 55 of the Act?

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 parties agreed the tenancy commenced on April 1, 2021, on a month-to-month basis, with rent of \$1,400.00 payable on the 1st day of each month. The Tenants were to pay a security deposit of \$700.00 and a pet damage deposit of \$700.00 by March 16, 2021. The Landlord acknowledged she received the security and pet damage deposits and that she was holding them in trust on behalf of the Tenants.

The Landlord stated she served a Ten Day to End Tenancy dated January 7, 2022 ("First 10 Day Notice") on the Tenant's door on January 7, 2022. SN acknowledged the Tenants received the First 10 Day Notice. The Landlord stated she served a Ten Day to End Tenancy dated February 3, 2022 ("Second 10 Day Notice") on the Tenant's door on February 3, 2022. SN acknowledged the Tenants received the Second 10 Day Notice. The Landlord stated she served a Ten Day to End Tenancy dated March 4, 2022 ("Third 10 Day Notice") on the Tenant's door on March 4, 2022. SN acknowledged the Tenants received the Third 10 Day Notice.

The Landlord testified the First 10 Day Notice stated the Tenants had rental arrears of \$2,800.00 as of January 1, 2022. The Landlord testified the Second 10 Day Notice stated the Tenants had rental arrears of \$4,200.00 as of February 1, 2022. The Landlord testified the Third 10 Day Notice stated the Tenants had rental arrears of \$5,600.00 as of March 1, 2022. The Landlord stated the Tenants owed the Landlord \$4,900.00 for rental arrears for the months of December 2021 and January, February and March 2022 after a payment of \$700.00 by the Tenants on March 15, 2021, calculated as follows:

Date	Owed	Paid	Balance
01-Dec-21	\$1,400.00	\$0.00	\$1,400.00
01-Jan-22	\$1,400.00	\$0.00	\$2,800.00
01-Feb-22	\$1,400.00	\$0.00	\$4,200.00
01-Mar-22	\$1,400.00	\$0.00	\$5,600.00
15-Mar-22	\$5,600.00	\$700.00	\$4,900.00
Total	\$5,600.00	\$700.00	\$4,900.00

When I asked SN whether the Tenants had provided the Landlord with their forwarding address to seek the return of the security and pet damage deposits, SN stated the Tenants had not provided a notice to the Landlord providing their forwarding address as the Tenants were waiting for this hearing to take place. SN also stated she was not aware the Tenants were required to give written notice and serve it on the Landlord before the Landlord was obligated, within 15 days of such service, to return the deposit to the Tenants or make a claim for damages or unpaid rent. At that point in time, SN disconnected from the conference at approximately 1:45 pm and she did not return to the hearing before it ended at 1:56 pm.

The Tenants submitted receipts dated December 1, 2021 and January 1, 2022 showing the Tenants had paid \$1,400.00 on each of those dates. Although the SN disconnected from the hearing before I could question her on these two receipts, I asked the Landlord if she had issued those receipts. The Landlord stated that, other than for the original security and pet damage deposits that she received from the Tenants in cash prior to the commenced of the hearing, she never took cash for the payment of rent.

Analysis

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As well, given the contradictory testimony and positions of the parties, I must also weigh the credibility of the parties. I have considered the parties' testimonies, their content and demeanor, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy. I find the testimony of the Landlord to be credible, forthcoming and persuasive. I found the testimony of SN to be evasive. As such, I placed less weight on SN's testimony than I placed on the Landlord's testimony.

1. Return of Deposit

SN stated the Landlord did not return the Tenants' security and pet damage deposits after they vacated the rental unit. SN admitted the Tenants did not serve the Tenant with a written notice providing their forwarding address to the Landlord.

Section 38(1) of the Act states:

- 38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

As the Tenants did not serve a written notice providing their forwarding address to the Landlord pursuant to either sections 38(1)(a) or 38(1)(b), the Landlord was not required to return the deposit to the Tenants pursuant to section 38(1)(c) of the Act or make an application for dispute resolution claiming against the security or pet damage deposits pursuant to section 38(1)(d) of the Act. As such, I dismiss the Tenants' claim for the return of the security and pet damage deposits.

2. Rental Arrears

Sections 46 and 53 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.

The Landlord testified the First 10 Day Notice was served on the Tenants' door on January 7, 2022. Pursuant to section 90, I find the Tenants were deemed to have received the 10 Day Notice on January 10, 2022. Pursuant to section 46(4), the Tenants had until January 17, 2022, being the next business day after the end of the 5-day dispute period, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the Residential Tenancy Branch indicate the Tenants made the Application on January 9, 2022. Accordingly, the Tenants made the Application within the 5-day dispute period required by section 46(4) of the Act. I find the Landlord knew, or ought to have known that when they disputed the First 10 Day Notice, the Tenants were disputing any subsequent Ten Day Notices to End Tenancy that she served on the Tenants. As such, I find it was unnecessary for the Tenants to make applications for dispute resolution, or file and amendments to the Application, to dispute the Second 10 Day Notice or the Third 10 Day Notice.

The Tenants submitted into evidence receipts, purportedly signed by the Landlord, dated December 1, 2021 and January 1, 2022 for \$1,400.00 each. The Landlord disputed ever taking cash from the Tenants for rent and stated she never issued receipts to the Tenants for payment of rent. I have examined the Landlord's signatures on the tenancy agreement and the three 10 Day Notices she signed. The signatures appearing on the two receipts submitted by the Tenant appear to have been mechanically reproduced and do not look like the Landlord's signatures on the tenancy agreement or the three 10 Day Notices. I find, on a balance of probabilities, that the receipts submitted by SN are forgeries. As such, I do not find the Tenants made any payments for rent, other than the \$700.0 paid on March 15, 2022, for December 2021 through March 2022.

Section 26 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.

Pursuant to s. 26(1) of the Act, a tenant must pay rent when it is due whether the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the Act grants the tenant the right to deduct all or a portion of the rent. The Act is unequivocal that the obligation to pay rent rests solely with the Tenant. I find the Tenants owed the Landlord \$2,800.00 for rental arrears as of February 1, 2022. As such, I find there was a valid reason for the Landlord serving the Tenants with the First 10 Day Notice. As the Tenants vacated the rental unit on March 15, 2022, the Tenant's claim for cancellation of the First, Second and Third 10 Day Notices are dismissed.

Subsections 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.

I have reviewed the 10 Day Notice and find that it complies with the form and content requirements of section 52 of the Act. Section 55(1.1) 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 requiring payment of the unpaid rent. I find the Tenants had rental arrears of \$4,900.00 for December 2022 through March 2022 inclusive. As such, I order the Tenants to pay the Landlord \$4,900.00 for the rental arrears.

Pursuant to section 72(2)(b) of the Act, the Landlord may deduct the Tenants' security and pet damage deposits, totaling \$1,400.00, from the rental arrears owed by the Tenants, leaving a balance of \$3,500.00.

As I find found the Landlord is entitled to apply the \$1,400.00 security and pet damage deposit towards the rental arrears owed by the Tenants, I dismiss the Tenants' claim for the return of the security and pet damage deposits without leave to reapply.

As I have dismissed all of the Tenants' claims, I dismiss the Application in its entirety without leave to reapply.

Conclusion

Pursuant to section 55(1.1) of the Act, I order that the Tenant pay the Landlord \$3,500.00 representing the following:

Description	Amount
Rental Arrears	\$4,900.00
Security and Pet Damage Deposits Credit	-\$1,400.00
Total	\$3,500.00

It is the Landlord's obligation to serve this Order on the Tenants. If the Tenants do not comply with the Monetary Order, it may be filed with the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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

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: August 2, 2022

Residential Tenancy Branch