



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

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 a 10 Day Notice to End Tenancy for Unpaid Rent dated May 6, 2022 ("10 Day Notice"); and for an Order for the Landlord to Comply with the Act or tenancy agreement.

Two agents for the Landlord, K.C. and T.K. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only persons to call into the hearing were the Agents, who indicated that they were ready to proceed. 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.

I explained the hearing process to the Agents and gave them an opportunity to ask questions about it. During the hearing, the Agents were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant was provided with a copy of the Notice of a Dispute Resolution Hearing on May 19, 2022; however, the Tenant did not attend the teleconference hearing scheduled for September 23, 2022, at 9:30 a.m. (Pacific Time). The phone line remained open for 13 minutes and was monitored throughout this time.

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 9:30 a.m. on September 23, 2022, as scheduled.

Rule 7.3 states that 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 reapply. The teleconference line remained open for over 13 minutes, however, neither the Applicant nor an agent acting on her 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 without leave to reapply**.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and the Agents provided their address in the hearing. The Agents also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Agents that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

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.

The Agent said that the Tenant moved out on approximately May 16, 2022, and that she did not serve them with her Notice of Hearing documents or evidence submitted to the RTB. As such, the Landlord no longer seeks an order of possession from this proceeding.

However, section 55 (1.1) of the Act 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: [emphasis added]

- (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;

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for rent arrears, and if so, in what amount?

Background and Evidence

The Agents confirmed that the fixed-term tenancy began on March 1, 2022, with a monthly rent of \$1,893.00, due on the first day of each month. The Agents confirmed that the Tenant paid the Landlord a security deposit of \$946.50, and no pet damage deposit. The Agents said that the Landlord still holds the Tenant's security deposit, as she did not provide a forwarding address in writing, nor ask for the return of the security deposit.

The 10 Day Notice provided by the Tenant was signed and dated May 6, 2022, it has the rental unit address, it was served by affixing a copy to the rental unit door on May 6, 2022. The 10 Day Notice has an effective vacancy date of May 19, 2022, and it was served on the grounds that the Tenant failed to pay the Landlord \$1,893.00 when it was due on May 1, 2022.

Further, the Landlord said that the Tenant was given a move-in promotion of the first month free, if she stayed for the initial six-month term of the tenancy agreement. The Tenant benefited from this promotion by getting free rent in March 2022; however, she did not stay until the end of August 2022, as was a required part of the promotion. As such, the Landlord requests recovery of this \$1,893.00 in unpaid rent.

In addition, the Agents said that the Tenant did not pay any rent for April or May 2022, and that they seek recovery of these rent arrears for the Landlord, as well.

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.

Section 26 of the Act states: "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 this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

As noted above, 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 have dismissed the Tenant's Application, and further, I find that the 10 Day Notice complies with section 52 of the Act, as to form and content. Accordingly, I find that the Landlord is eligible for a monetary order pursuant to the Tenant's Application

I award the Landlord with recovery of three months unpaid rent of \$1,893.00 per month for a total of **\$5,679.00** from the Tenant, pursuant to sections 26, 46, 55 (1.1) and 67 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's \$946.50 security deposit of in partial satisfaction of the Landlord's monetary award. I authorize the Landlord to retain the Tenant's **\$946.50** security deposit, and I grant the Landlord a **Monetary Order** of **\$4,732.50** from the Tenant for the remaining monetary awards owing, and pursuant to section 67 of the Act.

Conclusion

The Tenant is unsuccessful in her Application to cancel the 10 Day Notice, as she moved out of the residential property shortly after applying for dispute resolution, and because she did not attend the participatory hearing.

The Tenant was found to owe the Landlord rent arrears of **\$5,679.00** from the tenancy, and the Landlord was awarded this amount in compensation, pursuant to sections 55 (1.1) and 67 of the Act.

The Landlord is authorized to retain the Tenant's **\$946.50** security deposit in partial satisfaction of this award. The Landlord is granted a **Monetary Order** from the Tenant for the remaining amount owing of **\$4,732.50**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: September 23, 2022

Residential Tenancy Branch