



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated July 13, 2022 (the "10 Day Notice") pursuant to section 46.

The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenants did not attend this hearing. I left the teleconference hearing connection open until 1:52 pm in order to enable the Tenants to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord and I were the only ones who had called into the hearing.

I informed the Landlord that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord testified that the Tenants did not serve her with the notice of dispute resolution proceeding packaged. The Landlord confirmed she became aware of this hearing through an email reminder from the Residential Tenancy Branch (the "RTB"). I find the Landlord was sufficiently served with notice of this hearing by the RTB pursuant to section 71(2) of the Act.

Preliminary Matter – Tenants’ Non-attendance

Rule 7.3 of the Rules of Procedure states:

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.

As the Tenants failed to attend this hearing for their own application while the Landlord duly attended, I directed this hearing to proceed in the absence of the Tenants.

Preliminary Matter – Tenancy Has Ended

The Landlord testified that the Tenants left the rental unit on or around July 27, 2022. I find that since the Tenants have vacated the rental unit, it is not necessary for me to consider whether the Landlord is entitled to an Order of Possession under section 55(1) of the Act.

Issues to be Decided

1. Are the Tenants entitled to cancel the 10 Day Notice?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

This tenancy commenced on March 1, 2020 for a fixed term ending on February 28, 2021 and continued thereafter on a month-to-month basis. Rent was \$2,100.00 per month due on the first day of each month. The Tenants paid a security deposit of \$1,050.00 which is held by the Landlord. A copy of the parties’ tenancy agreement has been submitted into evidence.

A copy of the 10 Day Notice has also been submitted into evidence. The 10 Day Notice is signed by the Landlord and has an effective date of July 26, 2022. The 10 Day Notice states that the Tenants failed to pay rent of \$2,100.00 due on July 1, 2022. The Tenants’ application indicates that the Tenants received the 10 Day Notice posted to their door on July 15, 2022.

The Landlord confirmed that the Tenants still owe rent of \$2,100.00 for July 2022. The Landlord testified the Tenants also left behind damage in the rental unit and unpaid strata fines.

Analysis

1. Are the Tenants entitled to cancel the 10 Day Notice?

Section 26(1) of the Act states that a tenant must pay rent when due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 46(2) of the Act requires that a 10 day notice to end tenancy must comply with section 52 of the Act, which states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

I have reviewed the 10 Day Notice and find that it complies with the requirements of section 52 in form and content.

I find the Tenants received the 10 Day Notice on July 15, 2022 as stated in their application. Records of the Residential Tenancy indicate that the Tenants applied to dispute the 10 Day Notice on July 18, 2022. Based on the foregoing, I find the Tenants made this application within the 5-day deadline required under section 46(4) of the Act.

Where a tenant has applied to dispute a notice to end tenancy, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the reason for ending the tenancy.

Although the Tenants made an application to dispute the 10 Day Notice, the Tenants did not attend the hearing to explain their reasons for disputing the notice.

I accept the Landlord's undisputed testimony that the Tenants did not pay rent for July 2022 as stated on the 10 Day Notice. I find there is no evidence to suggest that the Tenants had a legal right under the Act to withhold payment of rent to the Landlord.

Based on the foregoing, I find that the Landlord has established the grounds for ending this tenancy as stated in the 10 Day Notice. Accordingly, I dismiss the Tenants' claim to dispute the 10 Day Notice without leave to re-apply.

2. Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 55(1.1) of the Act states that the director must grant an order requiring the payment of unpaid rent when the notice to end tenancy complies with section 52 of the Act and the tenant's application to dispute the notice is dismissed.

Having found the 10 Day Notice to comply with section 52 and having dismissed the Tenant's claim to dispute the 10 Day Notice, I order the Tenants to pay the Landlord \$2,100.00 in unpaid rent pursuant to section 55(1.1) of the Act.

I find that the tenancy has already ended. As such, I authorize the Landlord, pursuant to section 72(2)(b) of the Act, to retain the full amount of the Tenants' \$1,050.00 security deposit held by the Landlord in partial satisfaction of the amount awarded to the Landlord in this decision.

The Monetary Order granted to the Landlord for the balance is calculated as follows:

Item	Amount
Unpaid Rent for July 2022	\$2,100.00
Less Security Deposit	- \$1,050.00
Total Monetary Order for Landlord	\$1,050.00

Conclusion

The Tenants' application is dismissed without leave to re-apply.

The Landlord is awarded \$2,100.00 for unpaid rent pursuant to section 55(1.1) of the Act. Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenant's \$1,050.00 security deposit in partial satisfaction of the total amount awarded in this decision.

Pursuant to section 55(1.1) of the Act, I grant the Landlord a Monetary Order in the amount of **\$1,050.00** for the balance. The Tenants must be served with this Order as soon as possible. Should the Tenants 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: October 14, 2022

Residential Tenancy Branch