



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **TT: CNR RR RP**
 LL: OPR-DR MNR-DR FFL

Introduction

This hearing was convened by way of conference call in response to two applications pursuant to the *Residential Tenancy Act* (the “Act”). The Tenants made one application (Tenants’ Application”) for:

- cancellation of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated May 20, 2022 (“10 Day Notice”) pursuant to sections 46;
- an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlords pursuant to section 65; and
- an order requiring the Landlords to complete repairs to the rental unit pursuant to section 32.

The Landlords made one application (“Landlords’ Application”) for:

- an Order of Possession pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 55; and
- authorization to recover the filing fee of the Landlords’ Application from the Tenants pursuant to section 72.

Neither of the two Tenants (“JM” and “TM”) attended this hearing. I left the teleconference hearing connection open until 10:25 am in order to enable the Tenants to call into this teleconference hearing scheduled for 9:30 am. The two Landlords (“BK” and “KK”) 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 Tenants’ Notice of Dispute Resolution Proceeding (“Tenants’ NDRP”). I also confirmed from the

teleconference system that BK, KK and I were the only ones who had called into this teleconference.

BK stated the Landlords served the Notice of Dispute Resolution Proceeding for the Landlords' Application and their evidence (collectively the "Landlords' NDRP Package") on TM in-person on July 24, 2022. Based on the undisputed testimony of BK, I find the Landlords' NDRP Package was served on TM pursuant to the provisions of sections 88 and 89 of the Act.

Preliminary Matter – Severance and Dismissal of Tenants' Claims

The Tenants' Application included claims for an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlords and an order requiring the Landlords to complete repairs to the rental unit. BK stated there was an arbitration held on July 21, 2022 ("Previous Hearing") between the Landlords and Tenants. BK stated the arbitrator who presided over the Previous Hearing found the tenancy ended on July 21, 2022 and issued an Order of Possession that required the Tenants to vacate the rental unit. BK stated the Tenants vacated the rental unit on August 1, 2022.

Section 62(4)(b) of the Act states:

- 62(4) The director may dismiss all or part of an application for dispute resolution if
[...],
(b) the application or part does not disclose a dispute that may be determined under this Part, or
[...]

As the Tenants have vacated the rental unit, their claims for an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlords and an order requiring the Landlords to complete repairs to the rental unit are no longer determinable under Part 5 of the Act. As such I dismiss, without leave to reapply, the Tenants' claims for order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlords and an order requiring the Landlords to complete repairs to the rental unit. If the Tenants believe the Landlords breached the tenancy agreement by not providing repairs, services or facilities agreed upon in the tenancy agreement during the tenancy, then they have the

option of making a new application for dispute resolution to make a claim for monetary compensation from the Landlords.

Preliminary Matter – Effect of Non-Attendance by Tenants

Rules 6.6, 7.1, 7.3 and 7.4 of the *Residential Tenancy Branch Rules of Procedure* (“RoP”) 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.

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.

As the Tenants did not appear at the hearing, pursuant to Rule 7.3, I dismiss the Tenants' claim to dispute the 10 Day Notice. As I have dismissed all the claims made in the Tenants' Application, I dismiss the Tenants' Application in its entirety 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 Landlord's Application to seek an Order of Possession or their monetary claim for rental arrears. However, the Landlords nevertheless bear the burden of proof to demonstrate that it is more likely than not that the 10 Day Notice is valid and they are entitled to a monetary order for the rental arrears owed by the Tenants. The Landlord must meet this burden even if though the Tenants did not attend the hearing.

Preliminary Matter – Amendment to Increase Claim for Unpaid Rent

BK testified the 10 Day Notice stated the Tenants had rental arrears of 5,025.00 as of May 1, 2022. BK stated that, after service of the 10 Day Notice, the Tenants did not pay any rent for the months of June and July 2022. As noted above, the arbitrator who presided over the Previous Hearing issued a decision in which he found the tenancy ended on July 21, 2022. As such, BK requested that I amend the Landlords' Application to increase the monetary claim made in it for unpaid rent to \$8,700.00.

Section 4.2 of the *Residential Tenancy Branch Rules of Procedure* state:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The Tenants disputed the 10 Day Notice and continued to occupy the rental unit after the effective date of the 10 Day Notice. I find a claim for recovery by the Landlords for all the rental arrears arising during the tenancy should have been reasonably anticipated by the Tenants. Based on the above, I order that the Landlords' Application be amended to increase the monetary claim for unpaid rent to \$8,700.00 pursuant to Rule 4.2.

Issues to be Decided

- Are the Landlords entitled to recover the rental arrears owing by the Tenants?
- Are the Landlords entitled to recover the filing fee for the Landlords' Application 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 Landlords' Application and my findings are set out below.

BK submitted into evidence a signed copy of the tenancy agreement between the Landlords and Tenants. The tenancy commenced on January 1, 2022, for a fixed term ending January 1, 2023, with rent of \$2,200.00 payable on the 1st day of each month. The Tenants were required to pay a security deposit of \$1,100.00 by January 1, 2022 and a pet damage deposit of \$1,100.00 by January 18, 2022. BK stated the Tenants did not pay either the security deposit or the pet damage deposit. Based on the foregoing, I find there was a tenancy between the Landlords and Tenant and that I have jurisdiction to hear the Landlords' Application.

BK stated the Tenants served the 10 Day Notice on TM in-person on May 20, 2022. Based on the undisputed evidence of BK, I find the 10 Day Notice was served on TM in accordance with the provisions of section 88 of the Act. The 10 Day Notice stated the Tenants owed \$5,025.00 as of May 1, 2022. BK stated that the Tenants had rental arrears of \$8,700.00 as of July 21, 2022, calculated as follows:

Date	Rent Owed	Paid	Balance
01-Jan-22	\$2,200.00		\$2,200.00
23-Jan-22		\$640.00	\$1,560.00
24-Jan-22		\$110.00	\$1,450.00
01-Feb-22	\$2,200.00		\$3,650.00
15-Feb-22		\$1,000.00	\$2,650.00
16-Feb-22		\$700.00	\$1,950.00
01-Mar-22	\$2,200.00		\$4,150.00
15-Mar-22		\$500.00	\$3,650.00
17-Mar-22		\$750.00	\$2,900.00
01-Apr-22	\$2,200.00		\$5,100.00

01-Apr-22		\$1,500.00	\$3,600.00
02-Apr-22		\$1,500.00	\$2,100.00
01-May-22	\$2,200.00		\$4,300.00
01-Jun-22	\$2,200.00		\$6,500.00
01-Jul-22	\$2,200.00		\$8,700.00
Total	\$15,400.00	\$6,700.00	\$8,700.00

Analysis

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]

BK stated the Landlords served the 10 Day Notice on TM in-person on May 20, 2022. Pursuant to section 46(4) of the Act, the Tenants had 5 days, or May 25, 2022, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the RTB Branch disclose the Tenants made their application on May 26, 2022. Accordingly, the Tenants did not make the Tenants' Application until after the 5-

day dispute period. As I have dismissed the Tenants' Application on other grounds, it is unnecessary for me to consider the implications of the Tenants filing the Tenants' Application after the 5-day dispute period provided for by section 46(4) of the Act.

I accept BK's testimony and evidence in its entirety. Although the 10 Day Notice stated the Tenants owed \$5,025.00 as of May 1, 2022, I find the Tenants nevertheless had rental arrears of \$4,230 on that date. As such I find the 10 Day Notice was issued for a valid reason. 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.

Based on the undisputed testimony of BK, I find, as of July 21, 2022, being the date the tenancy ended pursuant to the decision of the arbitrator who presided over the Previous Hearing, the Tenants had rental arrears of \$8,700.00 that accrued from January to July 2022. As such, the Tenants were responsible for paying the rent when it became due for each of the months from January 1, 2022 through to July 1, 2022.

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.

I have reviewed the 10 Day Notice and find it complies with the form and content requirements of section 52. Pursuant to section 55(1) of the Act, the Landlords are entitled to an Order of Possession requiring the Tenants vacate the rental unit. As the Tenants have already vacated the rental unit, it is no longer necessary for me to issue an Order of Possession.

The Landlords did not serve the Landlords' NDRP Package on JM. Sections 55(1) and 55(1.1) provide that, when tenants dispute a notice to end tenancy, and that application is dismissed, the arbitrator must grant an order of possession to the rental unit and must grant or order requiring the payment of the unpaid rent by the tenants whose application has been dismissed. In this case, the Tenants' Application was made by both JM and TM and the Tenants' Application was dismissed. Based on the foregoing, pursuant to section 55(1.1) of the Act, I order the Tenants to pay \$8,700.00, representing the unpaid rental arrears that accrued from January to July 2022.

As the Landlords have been successful in the Landlords' Application, pursuant to section 72(1), I order the Tenants to pay for the Landlord's filing fee.

Conclusion

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

Pursuant to section 55(1.1) of the Act, I order the Tenants pay the Landlords \$8,800.00 representing the following:

Description	Amount
Rental Arrears from January to April 2022	\$8,700.00
Landlords' filing fee for her application	\$100.00
Total	\$8,800.00

This Monetary Order must be served by the Landlords on the Tenants and may be enforced in the Small Claims Division of the 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: October 30, 2022

Residential Tenancy Branch