



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOP VISION REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

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 to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated June 15, 2022 ("10 Day Notice").

An agent for the Landlord, C.C. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The Residential Tenancy Branch ("RTB") provided the Tenant with a copy of the Notice of a Dispute Resolution Hearing on July 12, 2022; however, the Tenant did not attend the teleconference hearing scheduled for November 8, 2022, at 9:30 a.m. (Pacific Time). The phone line remained open for over 13 minutes and was monitored throughout this time. The only person to call into the hearing was the respondent Landlord's Agent, who indicated that he was ready to proceed.

Rule 7.1 of the RTB Rules of Procedure ("Rules") states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Agent 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 November 8, 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 her Application, and the Agent confirmed the Landlord's address in the hearing. He also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

The Agent said that the Tenant failed to serve him with her Notice of Hearing documents and evidence, as required by the Act and Rule 3.1. The Agent said that the Landlord had applied for dispute resolution, as well, however, when the Agent called the RTB to cancel that application, he learned about the Tenant's claim and this hearing.

The Agent said that the Tenant had vacated the residential property on the Friday prior to the hearing, but that there were a few remaining pieces of furniture that were left behind. He indicated that he prefers to obtain an order of possession from this process, if possible, in case the Tenant(s) return.

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.

Further, section 55 (1.1) of the Act states that if a tenant applies to dispute a landlord's eviction notice, then the director must grant the landlord 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;

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to recovery of unpaid rent, and if so, how much?

Background and Evidence

The Agent confirmed that the periodic tenancy began on April 1, 2021, with a (latest) monthly rent of \$1,624.00, due on the first day of each month. The Agent advised that the Tenant paid the Landlord a security deposit of \$800.00, and no pet damage deposit, and that the Landlord still holds the security deposit in full. Again, the Agent said the Tenant moved out on November 4, 2022.

The Tenant submitted a copy of the 10 Day Notice, and the Agent confirmed the following details of this Notice. The 10 Day Notice was signed and dated June 15, 2022, it has the rental unit address, it was served by attaching a copy to the rental unit door on June 15, 2022, with an effective vacancy date of June 29, 2022, and it was served on the grounds that the Tenant failed to pay the Landlord \$375.00 in rent when it was due on June 5, 2022.

The Agent said that the Tenant has not paid any rent since then, and that she, therefore, owes \$8,495.00, as set out in the table below.

Date Rent Due	Amount Owing	Amount Received	Amount Owing
June 1	\$1,624.00	\$1,249.00	\$375.00
July 1	\$1,624.00	\$0.00	\$1,624.00
Aug. 1	\$1,624.00	\$0.00	\$1,624.00
Sep. 1	\$1,624.00	\$0.00	\$1,624.00
Oct. 1	\$1,624.00	\$0.00	\$1,624.00
Nov. 1	\$1,624.00	\$0.00	\$1,624.00
	Total Owing		\$8,495.00

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

As no evidence was presented to me disputing the Landlord's claims, I therefore find that the Tenant failed to pay \$375.00 that was owing on June 1, 2022, and that she continued to not pay her rent in full, from July through November 2022. Accordingly, I **award the Landlord \$8,495.00** from the Tenant for unpaid rent owing to the Landlord, pursuant to the tenancy agreement.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's \$800.00 security deposit in partial satisfaction of the Landlord's monetary award. I authorize the Landlord to retain the Tenant's **\$800.00** security deposit, and I grant the Landlord a **Monetary Order** of **\$7,695.00** for the remaining amount owing after considering the security deposit, pursuant to sections 55 (1.1) and 67 of the Act.

Further, I find that the 10 Day Notice is consistent with section 52 of the Act, as to form and content. As such, and since I have dismissed the Tenant's Application, and pursuant to section 55 of the Act, I award the Landlord an **Order of Possession** of the rental unit, **effective two days** after it is served on the Tenant, if necessary.

Conclusion

The Tenant's Application is dismissed without leave to reapply, as the Tenant or an Agent for the Tenant did not attend the hearing to present the merits of the Application. The Respondent Landlord's Agent did attend the hearing. An Agent for the Landlord did attend the hearing and presented affirmed testimony about this matter.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession** of the rental unit, effective two days after service on the Tenant.

Pursuant to sections 55 (1.1) and 67 of the Act, I award the Landlord **\$8,495.00** in unpaid rent from the Tenant. The Landlord is authorized to retain the Tenant's **\$800.00** security deposit in partial satisfaction of this award. The Landlord is granted a **Monetary Order** of **\$7,695.00** from the Tenant for the remainder of the award owing.

This Decision will be emailed to the addresses provided by the Tenant in her Application and confirmed by the Agent in the hearing.

This Decision is final and binding on the Parties, except as 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: November 08, 2022

Residential Tenancy Branch