



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, RP, FFT

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 August 3, 2022 ("10 Day Notice");
- a Monetary Order of \$500.00 for damage or compensation under the Act;
- an Order for repairs to the unit or property, having contacted the Landlord in writing to make repairs, but they have not been completed; and
- recovery of her \$100.00 Application filing fee.

The Landlord, B.D., 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 August 23, 2022; however, the Tenant did not attend the teleconference hearing scheduled for December 5, 2022, at 9:30 a.m. (Pacific Time). The phone line remained open for over ten minutes and was monitored throughout this time. The only person to call into the hearing was the respondent Landlord, who indicated that he was ready to proceed.

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

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Landlord 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 December 5, 2022, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for twelve 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 wholly without leave to reapply.**

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and the Landlord confirmed his 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.

Following the ten-minute waiting period, the Tenant's Application was **dismissed without leave to reapply** as the Tenant failed to attend the hearing to present the merits of her Application or at the very least cancel her scheduled hearing in advance of the hearing. The Landlord did attend the hearing and was ready to proceed. Further, the Landlord said that the Tenant failed to serve him and/or his co-Landlord with any documents for this hearing. The Landlord said that he found out about the hearing, while enquiring at the RTB about other matters. The Tenant's failure to serve the Landlords with her Application, Notice of Hearing and documentary evidence is contrary to the Rules and is another ground for dismissing her Application wholly.

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;

In this proceeding, I considered the validity of the 10 Day Notice and whether the Tenant owes the Landlord any outstanding rent from the tenancy.

Issue(s) to be Decided

- Is the 10 Day Notice consistent with the Act, as to form and content?
- Are the Landlords entitled to a monetary order for unpaid rent, and if so, in what amount?

Background and Evidence

The Landlord confirmed the details of the tenancy, which he said included the Tenant and her roommate signing the latest lease for May 1, 2022, with a monthly rent of \$2,000.00, due on the first day of each month. The Landlord said that the Tenant and her co-tenant paid the Landlord a security deposit of \$1,000.00, and a \$600.00 pet damage deposit ("Deposits"). The Landlord said he still holds the Deposits in full, as he has applied for dispute resolution for other matters, and has asked to apply the Deposits to that claim.

In the hearing, the Landlord confirmed that the 10 Day Notice in front of me was signed and dated August 3, 2022, it has the rental unit address, and it was served in person on August 3, 2022. The 10 Day Notice has an effective vacancy date of August 13, 2022, and it was served on the ground that the Tenant failed to pay the Landlord \$1,000.00 in rent when it was due on August 1, 2022.

In the hearing, the Landlord said that the Tenant moved out on August 31, 2022, further to an order of possession he received in another proceeding; however, the Landlord said the Tenant failed to pay \$1,000.00 in rent for August 2022, and that the Landlord would like to utilize the provisions of the Act allowing him to claim against the Tenant for this outstanding rent owing.

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.

The Tenant applied for dispute resolution, but she did not attend the hearing to pursue

her claim against the Landlord's evidence. I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice on August 3, 2022, in person.

Section 26 of the Act states that 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 the Act to deduct all or a portion of the rent. In the hearing, the Landlord said that he was owed \$1,000.00 in unpaid rent as of August 1, 2022. I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenant did not attend the hearing to provide testimony as to why the rent was not paid, and she did not provide any documentary evidence establishing that she had a right under the Act to deduct all or a portion of the \$1,000.00 in rent owed for August 1, 2022. Accordingly, **the Tenant's Application to cancel the 10 Day Notice is dismissed without leave to reapply.**

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 10 Day Notice complies with section 52 of the Act, and if the Tenant's Application is dismissed, or the Landlord's notice is upheld.

As I have found that the 10 Day Notice complies with section 52 of the Act, and because have dismissed the Tenant's Application, I find that the Landlord is entitled to a monetary award of \$1,000.00 pursuant to section 55(1.1) of the Act. I, therefore, **award the Landlords with \$1,000.00 from the Tenant** for outstanding rent owed the Landlords for August 2022, pursuant to sections 55 (1.1) and 67 of the Act.

I authorize the Landlords to retain the Tenant's **\$1,000.00 security deposit** in complete satisfaction of this award, pursuant to section 72 of the Act.

Conclusion

The Tenant has not paid rent for August 2022. The Tenant applied for dispute resolution, but she failed to attend the hearing to present the merits of her evidence. Given this, and, as the Tenant failed to serve the Landlords with her Application and Notice of Hearing, and evidence for this proceeding, her Application is cancelled wholly without leave to reapply.

Pursuant to sections 55 (1.1) and 67 of the Act, the **Landlords are awarded \$1,000.00 in unpaid rent from the Tenant**. The Landlords are authorized to **retain the Tenant's \$1,000.00 security deposit** in complete satisfaction of this award.

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: December 05, 2022

Residential Tenancy Branch