



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 pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46.

The landlord's agent (the "agent") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this Decision. The confirmed email addresses are located on the cover page of this Decision.

Preliminary Issue- Service

Both parties agree that the tenant did not serve the landlord with this application for dispute resolution.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

Based on the testimony of both parties, I find that the tenant did not serve the landlord in accordance with Rule 3.1. I therefore dismiss the tenant's application for dispute resolution.

Both parties agree that the tenancy has ended.

The landlord testified that the tenant was not served with the landlord's evidence because the tenant did not provide a forwarding address at the end of the tenancy. The tenant did not dispute not providing a forwarding address to the landlord at the end of the tenancy.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") was put in the tenant's mail slot on July 11, 2022. The tenant testified that he received the Notice around that time. I find that the tenant was deemed served with the Notice on July 14, 2022, in accordance with sections 88 and 90 of the *Act*.

I decline to accept the landlord's evidence for consideration, except for the Notice. As both parties agree that they had a copy of the Notice, I accept the Notice for consideration. I find that as both parties had a copy of the Notice, neither is prejudiced by its consideration. As the tenant did not have a copy of the landlord's other evidence, the landlord's other documentary evidence is excluded from consideration.

Section 55(1) and section 55(1.1) of the *Act* states that if the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and the

director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice, the director must grant the landlord an order of possession and an order requiring the payment of the unpaid rent.

As this tenancy has ended, I will not consider granting an Order of Possession because the issue is moot.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order pursuant to section 55(1.1) of the *Act*?

Background and Evidence

While I have turned my mind to the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 1996 and has ended. Monthly rent in the amount of \$1,057.00 was payable on the first day of each month. A security deposit of \$362.00 was paid by the tenant to the landlord.

The Notice was entered into evidence, is signed by the landlord, is dated July 11, 2022, gives the address of the rental unit, states that the effective date of the notice is July 21, 2022, is in the approved form, #RTB-30, and states the following grounds for ending the tenancy:

You have failed to pay rent in the amount of \$1057 due on July 1, 2022.

Both parties agree that the tenant did not pay July 2022's rent in the amount of \$1057.00.

The tenant testified that he moved out on July 31, 2022 and did not provide the landlord with notification of his vacation of the subject rental property. The tenant testified that he has not paid the landlord for July 2022's rent because he is financially unable to do

so. The agent testified that the landlord became aware of the tenant's departure on August 3, 2022.

The agent testified that the landlord is seeking July and August 2022's rent from the tenant.

Analysis

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 46 is July 24, 2022. I find that the corrected effective date of the Notice is July 24, 2022.

Section 55(1) and section 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.

Upon review of the Notice I find that it meets the form and content requirements of section 52 of the *Act* because it:

- is signed and dated by the landlord,
- gives the address of the subject rental property,
- state the effective date of the notice,
- states the ground for ending the tenancy, and

- is in the approved form, RTB Form #30.

Residential Tenancy Guideline #3 (PG #3) states

Under section 55(1.1) of the RTA (section 48(1.1) of the MHPTA), the director must grant a landlord an order requiring the tenant to pay the unpaid rent if the following conditions are met:

- the tenant has disputed a notice to end tenancy issued by the landlord for unpaid rent under section 46 of the RTA (section 39 of the MHPTA);
- the notice to end tenancy complies with section 52 of the RTA (section 45 of the MHPTA); and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

This provision allows a landlord to obtain a monetary order for unpaid rent without having to file their own application. Under the legislation, the requirement to pay rent flows from the tenancy agreement. Unpaid rent is money that is due and owing during the tenancy.

Compensation for overholding under section 57 of the RTA (section 50 of the MHPTA) is not considered rent since overholding only occurs after a tenancy has ended. Compensation due to a loss of rent resulting from the tenant ending the tenancy early or by leaving the rental unit or manufactured home site in an unrentable condition is also not considered unpaid rent. The loss arises after and because of the tenancy ending. If a landlord is seeking such compensation, they must make a separate application for dispute resolution and give proper notice to the tenant in accordance with the provisions of the legislation. The director cannot make an order for this type of compensation under section 55(1.1) of the RTA (section 48(1.1) of the MHPTA).

To determine whether an amount owing is for unpaid rent and must be ordered at the hearing, the director must make a finding about when the tenancy ends or ended.

If the tenant has vacated or abandoned the rental unit prior to the date of the dispute resolution hearing, the date the tenancy ended is the date that the tenant vacated or abandoned the rental unit. Only rent owing up until this date would constitute unpaid rent for the purpose of section 55(1.1) of the RTA (section 48(1.1) of the MHPTA).

I accept the tenant's testimony that he moved out of the subject rental property on July 31, 2022. I find that the date the tenant vacated the unit, July 31, 2022, is the date the tenancy ended.

Since I have dismissed the tenant's application and have found that the Notice meets the form and content requirements of section 52 of the *Act*, I find that pursuant to section 55(1.1) of the *Act* the landlord is entitled to a monetary order for unpaid rent.

Based on the testimony of both parties I find that the tenant did not pay July 2022's rent and owes the landlord \$1,057.00 in unpaid rent.

As stated in PG #3, under section 55(1.1) of the *Act*, I am only permitted to grant the landlord a Monetary Order for Unpaid rent. Other damages such as damages for overholding or loss of rental income etc. must be made separately. As such I am unable to award the landlord August 2022's rent; however, the landlord has leave to apply for any additional damages suffered.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$362.00.

Conclusion

The landlord is entitled to retain the tenant's security deposit in the amount of \$362.00.

I issue a Monetary Order to the landlord in the amount of \$695.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: December 08, 2022

Residential Tenancy Branch