



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OLC LRE LAT RR FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (application) by the tenants seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 10 Day Notice for Unpaid Rent or Utilities dated September 4, 2022 (10 Day Notice), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for an order to suspend or set limits on the landlord's right to enter the rental unit, site or property, for permission to change the rental unit locks, for a rent reduction and to recover the filing fee.

The tenants were provided with a copy of the Notice of a Dispute Resolution Proceeding dated September 20, 2022 (Notice of Hearing) when they made their application. The tenants, however, did not attend the hearing set for January 23, 2023 at 11:00AM Pacific Time. The phone line remained open for 20 minutes and was monitored throughout this time. The only person to call into the hearing was the landlord and counsel for the landlord, AE (counsel).

Preliminary and Procedural Matters

The landlord confirmed their email address and was advised that the decision and any applicable orders would be emailed to them.

Counsel requested that the landlord's application be joined at the proceeding, which was denied as the timeline to join the applications had lapsed under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

Issues to be Decided

1. Should the tenants' application be dismissed for failing to attend their scheduled hearing?
2. If yes, does the Act require a monetary order for unpaid rent be issued to the landlord?

Background and Evidence

The landlord testified that rent of \$2,700 remain owing for September 2022 and October 2022. The tenancy agreement submitted supports that monthly rent was \$2,700 and due on the first day of each month. The landlord confirmed that the tenants did not vacate until October 7, 2022 so there was no rent for September or October of 2022.

Analysis

Based on the tenants failing to attend the hearing they applied for and the testimony provided during the hearing by the landlord, and on the balance of probabilities, I find the following.

Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 7.1, 7.3 and 7.4 apply and state:

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 that 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.

Given the above and following the 10-minute waiting period, the application of the tenants was **dismissed without leave to reapply**. This decision does not extend any

applicable time limits under the Act. The landlord did attend the hearing, yet the applicant tenants did not attend the hearing to present the merits of their application.

I decline to grant the filing fee as the tenants' application is dismissed in full, without leave to reapply.

Section 55(1.1) of the Act applies and states:

55(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.**

[emphasis added]

The 10 Day Notice complied with section 52 of the Act as it is signed, dated and includes all of the required information to make it a valid notice. Also, pursuant to section 55(1.1) of the Act, **I must** grant the landlord **\$5,400** for unpaid rent of September and October of 2022 as monthly rent was \$2,700 and due on the first day of each month and the tenants did not vacate the rental unit until October 7, 2022. Pursuant to section 67 of the Act, I grant the landlord a monetary order of **\$5,400** as the tenants owe the landlord that amount for unpaid rent.

I find that the tenant breached section 26 of the Act which requires that monthly rent be paid on the date that it is due.

Conclusion

The tenants' application is dismissed in full without leave to reapply.

The landlord is granted a monetary order of \$5,400 as indicated above. The monetary order will be emailed to the landlord only for service on the tenants, if necessary. Should the landlord require enforcement of the monetary order, the order must be first served on the tenants with a demand for payment letter and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I caution the tenants that they can be held liable for all costs related to enforcement of the monetary order, including court costs.

This decision will be emailed to both parties at the email addresses confirmed by the landlord and the email address for the tenants provided in the tenants' application. The monetary order will be emailed to the landlord only for service on the tenants.

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: January 31, 2023

Residential Tenancy Branch