



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR, AAT, LRE, LAT, OLC, FFT
Landlord: OPR-DR, MNR-DR, FFL

Introduction

The Tenant filed an Application for Dispute Resolution on August 10, 2022 seeking:

1. to dispute a 10 Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”);
2. suspension/set conditions on the Landlord’s right to enter
3. access for Tenant and/or their guests
4. authorization to change the locks on the rental unit
5. the Landlord’s compliance with the legislation and/or the tenancy agreement
6. compensation for the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 4, 2022.

On September 1, 2022 the Landlord applied for an order of possession of the rental unit, in line with the 10-Day Notice. They also applied for compensation for the rent amount owing, and reimbursement of the Application filing fee. Though the Landlord applied by the non-hearing direct request method, their Application was joined to that of the Tenant that was already in place.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 10, 2023. The Landlord attended the telephone conference call hearing; the Tenant did not attend.

Preliminary Matter – Landlord Application for Dispute Resolution

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve the Tenant with the Notice of Dispute Resolution for this hearing. This means the Landlord must provide proof that the document has been served using a method allowed under s. 89(2) of the *Act*, and I must accept that evidence.

The Landlord set out how they served their Notice of Dispute Resolution to the Tenant via registered mail on September 9, 2022. They included an image of the envelope they used bearing the registered mail label with tracking number and the post office receipt. The Landlord stated that the package they sent to the Tenant – to the rental unit address where the Tenant still resided at that time -- included all the evidence they intended to rely on for this hearing.

Based on the submissions of the tenant, I accept the Landlord served the notice of this hearing in a manner complying with section 89(2)(b) of the *Act*. The hearing thus proceeded in the Tenant's absence.

Preliminary Matter – Tenant Application for Dispute Resolution

In the hearing, the Landlord stated they were not aware of the Tenant's Application for this hearing. Only the Residential Tenancy Branch notified the Landlord about the Tenant's Application.

The *Act* s. 59 contains the provisions for starting proceedings in a dispute resolution. Subsection (3) states: “. . . a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.”

The *Act* s. 89 gives the rules for service of the Notice of Dispute Resolution Proceeding. Additionally, the *Residential Tenancy Branch Rules of Procedure* specify the documents to be served (here, the Tenant) to the Respondent (here, the Landlord).

I find the Tenant did not provide a copy of their Notice of Dispute Resolution Proceeding to the Landlord. Because the Tenant did not attend the hearing, leaving only the Landlord's account, I find the Tenant did not give the required information to the Landlord of this hearing date and time, and particulars of their Application.

I therefore dismiss the Tenant's Application for this reason, without leave to reapply.

Preliminary Matter – tenancy ended

The Tenant's Application of September 1, 2022 was the first one filed in the matter of this tenancy. The Tenant did not attend the hearing, although I left the teleconference hearing open until 11:27am to enable them to call in to this teleconference hearing scheduled for 11:00. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding generated when the Tenant applied. I also confirmed throughout the duration of the call that the Tenant was not in attendance.

In the hearing, the Landlord stated they had not seen the Tenant since approximately November 2, 2022. The Tenant would not answer the Landlord's phone calls prior to this. Upon the Landlord's visit to the rental unit, they discovered the Tenant had removed all of their personal property except for a couple of items. The Tenant also discontinued the power to the rental unit.

The Landlord stated they had a new tenant within the rental unit on January 1, 2023.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides 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 without leave to reapply. On this basis, including and/or in the alternative to my dismissal of the Tenant's Application as set out above, I dismiss the Tenant's Application for cancellation of the August 8, 2022 10-Day Notice, without leave to reapply.

Issues to be Decided

Is the Landlord entitled to an Order of Possession, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to compensation for past rent amounts, pursuant to s. 55(1.1) of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement that the parties signed on April 2 and April 4, 2022, for the tenancy that started on April 2, 2022. This shows the rent amount of \$2,200 per month payable on the first of each month.

The Landlord received \$2,200 in total for a pet damage deposit, as indicated on page 3 of the tenancy agreement. In the hearing they stated that they were “not aware of the system” in reference to the limit on how much can be asked for a deposit. They acknowledged this amount should be \$1,100 as per the *Act*.

The Landlord provided a copy of the 10-Day Notice. They issued this to the Tenant on August 6, 2022 for the August 15 move-out date. This was for a rent amount total of \$3,300 total that they recorded as owing on July 2, 2022.

The Landlord in the hearing provided that they served the 10-Day Notice by attaching it to the door of the rental unit. They provided a photo showing this.

In the hearing, the Landlord explained the following monthly rent amounts, from the start of the tenancy:

- April 2022: paid in full
- May 2022: paid in full
- June 2022: paid in full
- July 2022: the Tenant paid \$1,200 on August 1, 2022, the Landlord considered this paid from use of the extra deposit money they received at the start of the tenancy. This is as indicated on the Landlord’s Direct Request Worksheet they prepared for this hearing. This left an amount owing of \$1,000,
- August 2022: the Tenant did not pay \$2,200 for this month. They paid the extra \$1,000 owing from July 2022 on August 9.
- September – December 2022: unpaid

The Landlord explained that the Tenant authorized use of the deposit overcharge for the purpose of paying some money toward the July 2022 rent.

The Tenant did not notify the Landlord that they were moving out from the rental unit, and the Landlord made this discovery on November 2, 2022, when the visited the rental unit. The Landlord had no communication with the Tenant after this. In the hearing, the Landlord stated their concern that the Tenant would possibly return to the rental unit, based on no key returned. For good measure, the Landlord changed the locks and deactivated the fob they issued previously to the Tenant.

The Landlord also mentioned the need for hiring a painter to fix the walls within the rental unit, as well as the need to “re-do the countertop.” The Landlord did not submit specific details or invoice amounts for this work.

In total, the Landlord claims \$11,000 in total; for rent amounts owing, each of August through to December 2022. The Landlord stated the condition of the rental unit left them without the ability to rent the unit for December 2022, requiring repainting and other repairs.

Analysis

For the reasons outlined above, I dismiss the Tenant’s Application for cancellation of the 10-Day Notice, and other relief.

On my review of the document, that 10-Day Notice contains the necessary elements for it to be effective; therefore, it complies with the s. 52 requirements for form and content.

Where the Tenant’s Application is dismissed, the *Act* s. 55(1)(b) states I must grant an Order of Possession to the Landlord, where the 10-Day Notice complies with form and content. Though the Landlord acknowledged the Tenant had moved out, they stated their concern with the Tenant’s capability and possible desire to return to the rental unit at some point. I grant an Order of Possession where the Landlord is legally entitled to one in this situation.

The *Act* allows for a landlord to recover rent in the situation where a tenant’s application to cancel a 10-Day Notice is dismissed. Here, I find the Landlord provided sufficient evidence to show the Tenant occupied the rental unit from August through to October. Additionally, the Landlord did not receive notice from the Tenant about ending the tenancy; therefore, I grant the Landlord a rent amount for the full month of November.

Given that the Landlord discovered the Tenant had effectively abandoned the rental unit at the very start of November, I conclude the Landlord had the full calendar month of November to complete clean-up and or damage repair within the rental unit. I dismiss the Landlord’s additional claim for December rent for this reason.

Based on the evidence from their Application materials, and the Landlord's testimony in the hearing, I grant the Landlord a monetary award for rent amount owing. This is unpaid rent as set out above, in accordance with s. 55(1.1) of the *Act*.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by a Landlord. Here, the Landlord has established a claim of \$8,800. After setting off the remainder of the security deposit held by the Landlord – the amount of \$1,000 -- there is a balance of \$7,800. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$7,800 as compensation for the rent amounts owing.

Because they were successful in this Application, I grant reimbursement of the \$100 Application filing fee to the Landlord.

Conclusion

In the absence of the Tenant, I dismiss their application in its entirety and without leave to re-apply.

Pursuant to s. 55 of the *Act*, I grant the Landlord an Order of Possession, effective immediately upon service on the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order of Possession with the Supreme Court of British Columbia where it will be enforced as an Order of that Court.

Pursuant to s. 55(1.1) of the *Act*, I grant the Landlord a Monetary Order for the recovery of the amounts claimed. This amount is \$7,900, including the filing fee amount. The Monetary Order must be served on the Tenant. The Monetary Order may be filed in and enforced as an Order of the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: January 16, 2023

Residential Tenancy Branch