



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR OLC FFT**

Introduction

This hearing was convened as a result of the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act"). The Tenants seek:

- an order cancelling a 10 Day Notice for Unpaid Rent and/or Utilities dated December 7, 2022 ("10 Day Notice") pursuant to section 46;
- an order for the Landlord to comply with the Act, *Residential Tenancy Regulations* ("Regulations") and/or the tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

The Landlord and the two Tenants ("JC" and "AT") attended this hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

AT stated the Tenants served the Notice of Dispute Resolution Proceeding ("NDRP") and their evidence ("Tenants' Evidence") on the Landlord by registered mail, but he could not recall the date of posting or provide the Canada Post tracking number for service. Initially the Landlord denied she received the NDRP but then admitted she received it by registered mail. The Landlord referred to the Canada Post sticker on the package and stated it indicated the posting of it was December 16, 2023. As such, I find the NDRP was served by the Tenants on the Landlord in accordance with the provisions of section 89 of the Act.

JC stated the evidence they served with the NDRP consisted of a copy of the 10 Day Notice and a copy of the tenancy agreement. The Landlord acknowledged receipt of the Tenants' Evidence. As such, I find the Tenants have proven, on a balance of probabilities, that the Tenants' evidence was served on the Landlord in accordance with the provisions of section 88 of the Act.

Preliminary Matter – Service of Landlord's Evidence on the Tenants

The records of the RTB indicate the Landlord submitted her evidence to the RTB on April 18, 2023. Rule 3.15 of the RoP states:

3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10) and an additional rent increase for capital expenditures application (see Rule 11), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch *not less than seven days before the hearing*.

The RoP defines days as:

Days

- a) If the time for doing an act in relation to a Dispute Resolution proceeding falls or expires on a holiday, the time is extended to the next day that is not a holiday.

- b) If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.
- c) In the calculation of time expressed as clear days, weeks, months, or years, or as "at least" or "*not less than*" a number of days, weeks, months, or years, *the first and last days must be excluded*.
- d) In the calculation of time not referred to in subsection (c), the first day must be excluded and the last day included.

[emphasis in italics added]

The Landlord's evidence was not submitted to the RTB at least seven days before the hearing. As such, the Landlord has not complied with Rule 3.15 of the RoP. Based on the foregoing, the Landlord's evidence is not admissible for this hearing.

Preliminary Matter – Dismissal of Application

AT stated the Tenants vacated the rental unit on January 16, 2023. The Landlord stated the Tenants vacated the rental unit on January 19, 2023. Regardless of the date the Tenants vacated the rental unit, they no longer require an order for cancellation of the 10 Day Notice or an order for the Landlord to comply with the Act, Regulations and/or tenancy agreement. As the Tenants vacated the rental unit prior to this hearing, they are not entitled to recover the filing fee for the Application. As such, I dismiss the Application in its entirety without leave to reapply.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent pursuant to section 55(1.1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Tenants submitted into evidence a copy of the tenancy agreement dated July 13, 2014. The parties agreed the tenancy commenced on September 1, 2014, on a month-to-month basis, with rent of \$1,500.00 per month. The parties agreed the Tenants were required to pay 60% of the utilities. The parties agreed the rent was increased to \$1,640.00 commencing on October 20, 2021. The parties agreed Tenants were required to pay a security deposit of \$700.00. The Landlord acknowledged the Tenants paid the security deposit and that she is holding the deposit in trust for the Tenants.

The Landlord stated she believed she served the 10 Day Notice in the Tenants' mailbox on December 7, 2022. JC admitted the Tenants received the 10 Day Notice. The Tenants made the Application on December 9, 2022 to dispute the 10 Day Notice. Although there was some uncertainty on the actual date of service of the 10 Day Notice, the Tenants made the Application two days after the date of the 10 Day Notice. As such, I find the 10 Day Notice was served on the Tenants in accordance with the provisions of section 88 of the Act. As noted above, I have dismissed the Application as the Tenants have vacated the rental unit.

The 10 Day Notice stated the Tenants had rental arrears of \$1640.00 as of December 1, 2022 that arose from the Tenants' failure to pay the rent for December 2022. I noted there was a previous arbitration for dispute resolution ("Previous Application") made by the Tenants in which they disputed a Two Month Notice for Landlord's Use of Property. In the decision, dated January 24, 2023, for the Previous Application, the arbitrator found the Landlord had proven the 2 Month Notice was issued for a valid and sufficient reason. The arbitrator also found the Tenants were overholding the tenancy and the arbitrator issued an Order of Possession requiring the Tenants to vacate the rental unit. The arbitrator also stated the Tenants were entitled to compensation in the amount of one month's rent pursuant to section 51 of the Act.

The Landlord stated she served the Tenants with the Order of Possession on December 29, 2022. The Tenants agreed they received the Order of Possession on December 29, 2022. The Landlord agreed all the rent was paid by the Tenants up to November 30, 2022. The Landlord acknowledged she did not pay any compensation to the Tenants pursuant to subsections 51 of the Act.

Analysis

As noted above, I have dismissed the Application because the Tenants have vacated the rental unit. As such, I must now consider whether the Landlord is entitled to recover rental arrears for December 2022 of \$1,640.00 set out in the 10 Day Notice.

Subsections 55(1) and 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.

As stated by the arbitrator in the Previous Decision, the Tenants were entitled to compensation of one month's rent pursuant to section 51 of the Act. The Landlord admitted she did not pay any compensation to the Tenants pursuant to section 51. As such, the Tenants were entitled to either stay in the rental unit until December 31, 2023 without paying any rent or be paid an amount equal to one month's rent if they vacated the rental unit before December 1, 2022. As the Tenants chose to remain the rental unit, the Tenants did not owe Landlord for any rent for December 2022. As such, Landlord is not entitled to an order for payment of unpaid rent pursuant to section 55(1.1) of the Act. Based on the foregoing, the Landlord has not been successful in her claim for an Order of Possession or for a monetary order for unpaid rent for December 2023. As such, I find the Landlord is not entitled to recovery of the filing fee for the Application.

Based on the above, I dismiss the Application in its entirety without leave to reapply.

Conclusion

The Application is dismissed in its entirety without leave.

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: May 8, 2023

Residential Tenancy Branch