



# 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* ("Act") for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 3, 2022 ("10 Day Notice"), pursuant to section 46.

The tenant did not attend this hearing, which lasted approximately 22 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 11:00 a.m. and ended at 11:22 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only people who called into this teleconference.

The landlord confirmed his name and spelling. He stated that he owns the rental unit. He provided the rental unit address. He provided his email address for me to send a copy of this decision to him after the hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recording of this hearing by any party. At the outset of this hearing, the landlord affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlord. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests. He confirmed that he was ready to proceed with this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord stated that he did not submit any documentary evidence for this hearing.

The landlord testified that he served the tenant with the landlord's 10 Day Notice on February 3, 2022, by way of posting to the tenant's rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on February 6, 2022, three days after its posting.

The tenant indicated that he received the landlord's 10 Day Notice on February 3, 2022, by way of posting to his door, in the online RTB details of this application, when he applied to cancel it.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to remove one of the landlord's surnames, which was duplicated by the tenant. The landlord consented to this amendment during this hearing.

#### Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the RTB *Rules* provides as follows:

*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.*

In the absence of any appearance by the tenant, I order the tenant's application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notices, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

The landlord confirmed that he already received an order of possession at a previous RTB hearing and the tenant moved out of the rental unit on March 20, 2022. He said that he

did not require an order of possession against the tenant. Therefore, I did not issue an order of possession to the landlord.

Section 55(1.1) of the *Act* states the following:

*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.*

Effective on March 25, 2021, the landlord is entitled to a monetary order for unpaid rent without filing a separate application. The tenant filed this application on February 15, 2022. As noted above, the tenant's application to cancel the 10 Day Notice was dismissed without leave to reapply.

I informed the landlord that I could not make a decision regarding his claims for junk removal or key replacement because he did not file an application for same to be heard at this hearing. I notified him that I could only deal with his claim for a monetary order for unpaid rent, pursuant to section 55 of the *Act*, at this hearing. The landlord confirmed his understanding of same.

#### Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

#### Background and Evidence

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

The landlord testified regarding the following facts. This tenancy began on November 1, 2021 and ended on March 20, 2022. Monthly rent in the amount of \$2,500.00 was payable on the first day of each month. A security deposit of \$1,250.00 was paid by the tenant and the landlord was ordered to retain the entire security deposit by another Arbitrator at a previous RTB hearing. A written tenancy agreement was signed by both parties.

The landlord stated the following facts. The landlord's 10 Day Notice was issued to the tenant for unpaid rent of \$2,500.00 for each month of December 2021, January 2022, and February 2022, totalling \$7,500.00, as stated on page 2 of the notice. The landlord was awarded a monetary order of \$5,892.85 and to retain the tenant's security deposit of \$1,250.00, for the unpaid rent from December 1, 2021 to February 24, 2022 at the previous RTB hearing, which was held on February 24, 2022 and a decision was issued on March 10, 2022, by a different Arbitrator. Rent for February 2022 was calculated by the Arbitrator as: "\$2,142.85 in per diem rent for February 1, 2022 -February 24, 2022, (\$2,500.00/28 x 24)." The landlord was also provided with a two-day order of possession against the tenant at the previous RTB hearing. The tenant did not attend the previous RTB hearing for the tenant's application, only the landlord attended.

The landlord stated that he seeks a monetary order of \$1,972.60 for unpaid rent from the tenant for the 24-day period from February 25, 2022 to March 20, 2022. He said that he calculated the unpaid rent annually, as follows: \$2,500.00 x 12 months annually = \$30,000.00/365 days in a year = \$82.19 x 24 days = \$1,972.60.

### Analysis

I informed the landlord that neither party provided a copy of the previous RTB decision, as evidence for this hearing. I notified him that the previous application was closed, and no evidence was transferred from that previous file to this current application file. The landlord confirmed his understanding of same.

I located the previous RTB decision on the online RTB system during this hearing. I reviewed the previous RTB decision, prior to issuing this decision. I confirmed that the landlord was issued a two-day order of possession against the tenant, a monetary order of \$5,892.85, and to retain the tenant's security deposit of \$1,250.00, for unpaid rent from December 1, 2021 to February 24, 2022, against the tenant. The file number for the previous RTB hearing appears on the cover page of this decision.

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent for 24 days from February 25 to March 20, 2022. I find that the landlord is entitled to rental arrears from the tenant. I find that the landlord is entitled to \$357.14 from February 25, 2022 to

February 28, 2022 (\$2,500.00/28 days in February 2022 x 4 days). I find that the landlord is entitled to \$1,612.90 from March 1, 2022 to March 20, 2022 (\$2,500.00/31 days in March 2022 x 20 days). Therefore, I issue a monetary order of \$1,970.04 total to the landlord, against the tenant, for unpaid rent from February 25, 2022 to March 20, 2022.

As the tenant's security deposit of \$1,250.00 has already been dealt with at the previous RTB hearing, I cannot make any orders regarding same.

### Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord is not issued an order of possession against the tenant.

I issue a monetary order in the landlord's favour in the amount of \$1,970.04 against the tenant. 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: May 16, 2022

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Residential Tenancy Branch