



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, FFT**

Introduction

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

- for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated February 4, 2022 ("10 Day Notice") pursuant to section 46; and
- authorization to recover the filing fee of the Application from the Landlords.

The Tenants did not attend this hearing. I left the teleconference hearing connection open until 9:40 am in order to enable the Tenants to call into this teleconference hearing scheduled for 9:30 am. One of the two Landlords ("KS") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that KS and I were the only ones who had called into this teleconference.

KS testified the Tenants never served the Landlords with the NDRP. KS stated the Landlords obtained a copy of the NDRP from the Residential Tenancy Branch ("RTB"). KS stated the Landlords received an automated email message from the Residential Tenancy Branch ("RTB") advising that a hearing was being held today. KS stated the Landlords called the RTB regarding the message and the RTB emailed them a courtesy copy of the NDRP. KS stated the Landlords wanted to proceed with the hearing notwithstanding the Tenants did not serve them with the NDRP or any evidence. I find the Landlords were sufficiently served with the NDRP pursuant to section 71(2)(b).

Preliminary Matter – Effect of Non-Attendance by Tenants

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* (“RoP”) states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, even though the Tenants made the Application, the Landlords bear the burden of proof it is more likely than not that the 10 Day Notice is valid. The Landlords must meet this burden even if the Tenants do not attend the hearing.

Rules 7.1, 7.3 and 7.4 of the RoP 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 the 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 Tenants did not attend the hearing before it ended at 9:51 am, the Application is dismissed without leave to reapply. As the Tenants were not present at the hearing, I

will not consider any of the evidence submitted by the Tenants in advance of the hearing when adjudicating the Landlords' claims pursuant to section 55 of the Act except for the copy of the tenancy agreement and 10 Day Notice the Tenants submitted before the hearing.

Issues

Are the Landlords entitled to:

- an Order of Possession pursuant to section 55(1) of the Act?
- a Monetary Order for the rental arrears owing by the Tenants to the Landlords 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 KS, only the details of the respective submissions and/or arguments of KS relevant to the issues and findings in this matter are reproduced here. The relevant aspects of the Landlords' claims pursuant to section 55 of the Act and my findings are set out below.

KS testified the tenancy commenced on February 1, 2020, on a month-to-month basis, with rent of \$2,100.00 payable on the 1st day of each month. KS stated the Tenants were to pay a security deposit of \$1,050.00 and a pet damage deposit of \$1,050.00 on or before March 1, 2020. KS stated the Tenants paid the security and pet damage deposits and that the Landlords were holding the deposits in trust for the Tenants. KS stated the Landlords served the Tenants with a Notice of Rent Increase, dated October 28, 2021, on the Tenants on October 31, 2021 that increased the rent from \$2,100.00 to \$2,130.00 effective on February 1, 2022. KS stated the Tenants vacated the rental unit on February 14, 2022.

KS stated the 10 Day Notice was served on the Tenants' door on February 4, 2022. The 10 Day Notice stated the Tenants had rental arrears of \$2,130.00 as of February 1, 2022. I noted that only the first two pages of the 10 Day Notice were filed with the RTB prior to the hearing. KS stated the Landlords served all three pages of the 10 Day Notice on the Tenants. At my request, KS upload a copy of the 10 Day Notice to the RTB Service Portal for my review.

Analysis

Sections 46(1) through 46(5) of the Act state:

- 46(1)** A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than *10 days after the date the tenant receives the notice*.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
 - (b) *must vacate the rental unit to which the notice relates*

[emphasis in italics added]

KS stated the Landlords served the 10 Day Notice in the Tenants' door on February 4, 2022. Pursuant to section 90 of the Act, the Tenants were deemed to have received the 10 Day Notice on February 7, 2022. Pursuant to section 46(4) of the Act, the Tenants had until February 14, 2022, being the first business day after the 5-day dispute period ended, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the RTB disclose the Tenants made their application on February 5, 2022. Accordingly, the Tenants made their application within the five-day dispute period.

KS testified there was a tenancy between the Landlords and Tenants for the rental unit commencing February 1, 2020. KS stated the Landlords served the Tenants with a Notice to Increase Rent that increased the rent to \$2,130.00 per month effective on February 1, 2022. KS stated the Tenants did not pay the rent for February 2022 in the amount of \$2,130.00. I accept KS's undisputed testimony in its entirety. I find that the Tenants owe the Landlords rental arrears of \$2,130.00 for February 2022. Section 26(1) of the Act states:

- 26 (1)** A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenants were responsible for paying rent when it was due. As such, I find that the 10 Day Notice was issued for a valid reason.

Sections 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.

I have reviewed the 10 Day Notice and find it complies with the form and content requirements of section 52. Pursuant to section 55(1) of the Act, the Landlords are entitled to an Order of Possession on the Tenants by the Landlords. As the Tenants have already vacated the rental unit, it is no longer necessary for me to issue an Order of Possession.

Pursuant to section 55(1.1) of the Act, I order the Tenants to pay \$2,130.00, representing the unpaid rental arrears for February 2022. Pursuant to section 72(2) of the Act, the Landlords may retain the security and pet damage deposits totaling \$2,100.00 in partial satisfaction of the Monetary Order made above.

Conclusion

The Tenants' application is dismissed without leave to reapply.

Pursuant to section 55(1.1) of the Act, I order the Tenants pay the Landlords \$30.00 representing the following:

Description	Amount
Rental Arrears for February 2022	\$2,130.00
Less Tenant's Security Deposit	-\$2,100.00
Total	\$30.00

This Monetary Order must be served by the Landlords on the Tenants and may be enforced in Provincial 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 15, 2022

Residential Tenancy Branch