



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, OLC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The Tenant applied for multiple remedies, including to cancel a 10 Day Notice for Unpaid Rent or Utilities, pursuant to the *Residential Tenancy Act* (the "Act").

A party, J.B., attended the hearing on behalf of the Landlord (herein referred to as the Landlord). However, the Tenants (applicants) did not. The hearing was by telephone conference and began promptly, as scheduled, at 11:00 AM Pacific Time on December 16, 2022, as per the Notice of a Dispute Resolution Hearing provided to the Tenants. The line remained open while the phone system was monitored for at least 10 minutes and the only participant who called into the hearing during this time was the respondent Landlord who was ready to proceed. The Landlord testified that the Tenants moved out of the rental unit sometime in October 2022, and when they left, there was a large sum or rent owing.

After the ten minute waiting period, the Tenants' application was **dismissed in full, without leave to reapply**.

Section 55 of the *Act* applies and states:

Order of possession for the landlord

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.

[My emphasis added]

Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find the 10 Day Notice issued complies with section 52 of the *Act*, in terms of the form and content requirements. However, given the tenancy is already over, I find it is not necessary to issue an order of possession, pursuant to section 55 of the *Act*.

Next, I turn to section 55 (1.1) of the *Act*, which specifies that I must grant a monetary order for outstanding unpaid rent, provided a valid 10 Day Notice was issued, and if the Tenant's application to cancel the 10 Day Notice is dismissed. This means the only remaining issue for this application is what amount of rent is owed. This will be addressed further below.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

As per the lease agreement, rent in the amount of \$2,950.00 is due on the first of each month. The Landlord stated that they did not receive any rent for June, July, August,

September, or October 2022. The Landlord stated that the Tenants moved out part of the way through the month of October 2022.

The Landlord is seeking to recover unpaid rent for the above noted months, plus the NSF/late rent fees (additional \$50.00/month) for the above noted months.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I find there is insufficient evidence the Tenants had any right under the *Act* to withhold rent. I accept the Landlord's undisputed testimony that the Tenants owe and have failed to pay rent for June – October (5 x \$2,950.00). Although the Tenants moved out part way through October, I find they are liable for this month as well. I also accept the Landlord's testimony explaining that the Tenants incurred NSF/late rent charges on the above noted months (5 x \$50.00). In total, I find the Landlord is entitled to a monetary order in the amount of \$15,000.00 for unpaid rent and late rent/NSF fees.

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$15,000.00**. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: December 19, 2022

Residential Tenancy Branch