



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Nest Property Management and Real estate
Service and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant: CNR
Landlord: OPR-DR, MNR-DR, FFL

Introduction

On December 15, 2022, the Tenant filed their Application at the Residential Tenancy Branch to dispute the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10-Day Notice").

The Landlord filed an Application, joined to the Tenant's initial Application, on January 23, 2023, for an Order of Possession in line with the 10-Day Notice, compensation for unpaid rent, and reimbursement of 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 April 24, 2023. The Landlord attended the conference call hearing; the Tenant did not attend.

At the start of the hearing, the Landlord stated they received the Tenant's Notice of Dispute Resolution Proceeding, generated at the Residential Tenancy Branch and sent to the Tenant when they applied. This included a 4-page handwritten letter from the Tenant sent as evidence with their Application.

The Landlord stated they provided notice of their Application to the Tenant, as well as their prepared evidence, via registered mail they sent on February 1, 2023. From this evidence, I find as fact that the Landlord completed the provisions of service as required.

Preliminary Matter – Tenant's non-attendance in the hearing

The Tenant did not attend the hearing, although I left the teleconference hearing connection open until 11:15am to enable them to call in to this hearing scheduled for 11:00am. 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.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, an arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the Tenant's Application for cancellation of the 10-Day Notice, without leave to reapply.

Issues to be Decided

Is the Landlord entitled to an Order of Possession in line with the 10-Day Notice, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to compensation for rent amounts in the rental unit, pursuant to s. 55(1.1) and/or s. 67 of the *Act*?

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

Background and Evidence

In their evidence prepared for their Application, the Landlord provided a copy of the tenancy agreement. The set amount of rent, as set out in the agreement, was \$1,000 when the tenancy started on December 1, 2021, increasing to \$1,020 in January 2023. The Tenant paid a \$500 security deposit at the start of the tenancy, on November 16, 2021. The Tenant paid a \$700 security deposit at the start of the tenancy.

The Landlord issued the 10-Day Notice on December 11, 2022, for the set end-of-tenancy date of December 21, 2022. This was for the unpaid rent amount of \$3,280.

The Landlord indicated on the document that they served this to the Tenant in person on August 20, 2022. Also in the Landlord's evidence is a "Proof of Service" in which they set out how they served the document directly to the Tenant on that date. A witness also signed this form to indicate that they observed the Landlord's service directly to the Tenant.

In the hearing, the Landlord stated that the Tenant did not pay this amount of rent, or any other amount of rent, since the issuance of the 10-Day Notice.

The Landlord did not receive rent from the Tenant in the intervening months, through to the April 24, 2023 hearing date. The Landlord presented a ledger showing the amount of \$3,355 owing as of December 1, 2022; the Landlord explained the difference in this amount to that listed on the 10-Day Notice as the implementation of late fees, which was \$75. Progressing with the amount of \$1,020 for the subsequent four months, the balance comes to \$7,435.

The Tenant did not attend to present their version of events; therefore, there is no evidence contrary to that of the Landlord in this dispute.

Analysis

I find the record clear to establish that the basic rent amount was \$1,000 through to the end of 2022, then increasing to \$1,020 from January 2023 onwards. I find as fact the Tenant paid a \$500 security deposit at the start of the tenancy.

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not a landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. The wording appears thus:

- (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 of the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The *Act* s. 46(1) provides authority for a landlord to issue a notice to end a tenancy if rent is unpaid "on any day after it is due", with an end-of-tenancy date that is "not earlier than 10 days after the date the tenant receives the notice."

In this dispute the Landlord issued the 10-Day Notice on December 11, 2022. The Tenant did not complete rent payments within 5 days of being served the Notice of Dispute Resolution Proceeding. Otherwise, I have dismissed the Tenant's Application for their non-attendance in the hearing.

I conclude the Tenant did not pay the full rent amount as required. I find the tenancy agreement was explicit on the full amount of rent payable by the Tenant each month. The *Act* s. 26 applies and the Tenant had no authorization to withhold rent. Nor did they have any authority from the tenancy agreement. I find the Tenant breached s. 26 of the *Act*, and further breached s. 46(4) by not paying the full amount of the overdue rent.

Under s. 55 of the *Act*, when the Tenant's Application to cancel a notice to end tenancy is dismissed, and I am satisfied the document complies with the requirements of s. 52 regarding form and content, I must grant a landlord an order of possession.

On my review, I find the 10-Day Notice complies with the requirements of form and content; therefore, the Landlord here is entitled to an Order of Possession.

The *Act* s. 55(1.1) specifies that I must grant repayment of unpaid rent. This amount is \$7,435.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The Landlord here has established a claim of \$7,435. After setting off the \$500 security deposit, there is a balance of \$6,935. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$6,935 as compensation for the rent amounts owing, as plainly shown by the Landlord in their evidence.

The Landlord was successful on their Application; therefore, I grant reimbursement of the Application filing fee to them.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the 10-Day Notice, without leave to reapply. I dismiss the other grounds on their Application, without leave to reapply.

I grant an Order of Possession to the Landlord, effective **TWO DAYS** after they serve it to the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it may be enforced as an Order of that Court.

I order the Tenant to pay the Landlord the amount of \$7,035, pursuant to s. 55(1.1) and s. 72 of the *Act*. I grant the Landlord a monetary order for this amount. The Landlord may file this monetary order in the Provincial Court (Small Claims) where it will 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 s. 9.1(1) of the *Act*.

Dated: April 24, 2023

Residential Tenancy Branch