



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord testified that he personally served the tenant with the dispute resolution package on 22 February 2015. The tenant appeared at the hearing and did not contest service and admitted service the landlord's amended application. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

The landlord testified that he served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 11 February 2015 by posting the notice to the tenant's door. The landlord provided me with a witnessed proof of service statement that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the 10 Day Notice pursuant to sections 88 and 90 of the Act.

Preliminary Issue – Tenant's Adjournment Request

The tenant asked that the hearing be adjourned and reconvened as she was at work.

Residential Tenancy Branch, Rules of Procedure, rule 6.4 sets out the criteria for granting an adjournment:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- (a) the oral or written submissions of the parties;
- (b) whether the purpose for which the adjournment is sought will contribute to the objectives set out in Rule 1;
- (c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- (d) the degree to which the need for the adjournment arises out the intentional actions or neglect of the party seeking the adjournment; and
- (e) the possible prejudice to each party.

I informed the tenant at the hearing that I would not adjourn the hearing and that the hearing would commence as scheduled. Although I considered all the criteria in 6.4, I declined to adjourn the hearing as the tenant had ample notice of the hearing, and it would unfairly prejudice the landlord to reschedule the hearing.

In any event, the tenant was able to remain connected to the hearing until its conclusion.

Preliminary Issue – Amendment to Landlord's Application

The landlord asked to amend his application to include unpaid rent from March 2015. As the tenant reasonably ought to have known that this amount was owed, I have allowed the amendment as there is no undue prejudice to the tenant.

Preliminary Issue – Scope of Application

The landlord's amended application seeks a monetary order of \$1783.22. In the details of the dispute box there are several crossed out items that appear to relate to utilities. There is no detailed calculation of how the landlord arrived at his figures.

At the hearing the landlord indicated that he sought payment for unpaid utilities. I did not find copies of any utility invoices in the file.

Pursuant to paragraph 59(2)(b), an application of dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide the responding party with enough information to know the applicant's case so that the respondent might defend him or herself.

I find that the landlord did not sufficiently set out the details of his dispute in such a way that the tenant would have known that she needed to respond to that claim. As such, I informed the parties at the hearing that I would not consider a claim by the landlord for utilities.

This decision to narrow the scope of the proceedings does not preclude the landlord from reapplying for the utilities in a subsequent application.

I dismiss the landlord's application to recover the utility amounts from the tenant with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 15 February 2015. Current monthly rent is \$930.00 and is due on the first. The landlord testified that he continues to hold the tenant's security deposit in the amount of \$450.00, which was collected in February 2011.

On 11 February 2015, the landlord issued the 10 Day Notice to the tenant. This notice was the last in a series of notices. The 10 Day Notice was dated 11 February 2015 and set out an effective date of 22 February 2015. The 10 Day Notice set out that the tenant failed to pay \$930.00 in rent that was due on 1 February 2015.

The landlord testified that he has not received any payments from the tenant since he issued the 10 Day Notice. The tenant testified that she had not paid rent for February or March. The tenant testified that she told the landlord that she would pay her rent arrears, in full, if he would agree to continue the tenancy. The tenant testified that she told the landlord she could not afford to pay her rent arrears and pay for the security deposit and rent for her new rental unit. The tenant testified that the landlord told her to move.

The tenant testified that she intended to move from the rental unit at the end of February, but circumstances prevented her from doing so. The tenant testified that she intends to move from the rental unit on 21 March 2015.

The landlord and tenant both testified that the tenant has not provided any receipts for emergency repairs to the landlord and that there are no outstanding orders of this Branch.

The landlord claims for rental arrears totaling \$1,860.00:

Item	Amount
Unpaid February Rent	\$930.00
Unpaid March Rent	930.00
Total Monetary Order Sought	\$1,860.00

The tenant submitted that the landlord was improperly trying to end the tenancy. The tenant submitted that the landlord intends to renovate the rental unit.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of her tenancy on 24 February 2015, the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by 24 February 2015. As that has not occurred, I find that the landlord is entitled to a two-day order of possession. The landlord will be given a formal order of possession which must be served on the tenant(s). If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this order in the Supreme Court of British Columbia.

The landlord and tenant both agree that the tenant has unpaid rental arrears totaling \$1,860.00. I find that the tenant has provided insufficient evidence to show that the landlord waived his entitlement to the rent arrears when he told the tenant to move. I find that the landlord has proven his entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

The landlord's application to recover the utility amounts is dismissed with leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$1,460.00 under the following terms:

Item	Amount
Unpaid February Rent	\$930.00
Unpaid March Rent	930.00
Recover Filing Fee	50.00
Offset Security Deposit	-450.00
Total Monetary Order	\$1,460.00

The landlord is provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 19, 2015

Residential Tenancy Branch

