



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF; CNR, MNDC

Introduction

This hearing dealt with the landlord LL'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; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the Act for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

The only landlord listed in the landlord's application is the landlord LL. The only landlord listed as a respondent to the tenant's application is the landlord EL.

The tenant did not attend this hearing, although I waited until 1118 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord EL and his agent attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent testified that he personally served the tenant with the landlord's amended dispute resolution package on or about 27 September 2015. The agent testified that the package was also sent by registered mail on that date. The agent provided me with a Canada Post tracking number that showed the same. 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 agent testified that he personally served the tenant with the 10 Day Notice on 15 September 2015. On the basis of this evidence, I am satisfied that the tenant was served with the 10 Day Notice pursuant to section 88 of the Act.

Preliminary Issue – Amendment to Landlord's Application

At the hearing, the landlord EL asked to further amend the landlord's amended application to reduce the claim from \$4,423.00 to \$3,508.00 as the tenant vacated the rental unit on or about 10 October 2015.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution. In determining whether or not to allow an amendment, I must consider the prejudice to the responding party.

There is no prejudice to the tenant in allowing the landlord to amend her claim to reduce the monetary order amount. As such, the amendment is allowed.

Preliminary Issue – Disposition of Tenant's Application

The tenant did not attend the hearing. In the tenant's application, the tenant has the burden of proving, on a balance of probabilities, his entitlement to the claim for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act in relation to an alleged assault.

Rule 10.1 of the Rules of Procedure provides that:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any evidence or submissions from the tenant and in the absence of the tenant's participation in this hearing, I order the tenant's claim for a monetary order dismissed without leave to reapply.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? 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 landlord LL and agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's and landlord's claims and my findings around them are set out below.

This tenancy began September 2014. The tenant vacated the rental unit on or about 10 October 2015. Monthly rent was \$915.00. The landlord does not hold a security deposit.

The landlord testified that he and the tenant initially shared kitchen and washroom facilities, but this stopped approximately three months after the tenancy began.

The landlord testified that the tenant would often not pay his rent on time and that he was consistently in arrears. The landlord testified that he was not aware of any reason that would entitle the tenant to deduct any amount from his rent.

The landlord issued a 10 Day Notice on 1 September 2015. This notice was defective and was replaced with the 10 Day Notice dated 15 September 2015. The 10 Day Notice was served by the agent on 15 September 2015. The 10 Day Notice set out that the tenant had failed to pay \$2,593.00 that was due 1 September 2015.

The landlord testified that current rent arrears total \$3,508.00:

Item	Amount
Unpaid July Rent	\$763.00
Unpaid August Rent	915.00
Unpaid September Rent	915.00
Unpaid October Rent	915.00
Total Rent Arrears	\$3,508.00

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 landlord has the onus of proving that the notice is valid.

On the basis of the sworn and uncontested testimony of the landlord, I find that the tenant had rent arrears in the amount of \$2,593.00 as of 15 September 2015. The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The 10 Day Notice was validly issued and properly served. On this basis, the tenant's application to cancel the 10 Day Notice is dismissed without leave to reapply.

As the 10 Day Notice is valid, the tenant was required to vacate the premises by 25 September 2015. The landlord is entitled to a two-day order of possession.

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlord has provided sworn and uncontested testimony that the tenant has unpaid rental arrears totaling \$3,508.00. 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.

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

I issue a monetary order in the landlord's favour in the amount of \$3,558.00 under the following terms:

Item	Amount
Unpaid July Rent	\$763.00
Unpaid August Rent	915.00
Unpaid September Rent	915.00
Unpaid October Rent	915.00
Recover Filing Fee	50.00
Total Monetary Order	\$3,558.00

The landlord is provided with this order 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 this

order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order 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.

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

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: November 17, 2015

Residential Tenancy Branch

