



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF, CNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;

Both parties attended the hearing by conference call and gave undisputed affirmed testimony. The tenant has acknowledged receiving all of the landlord's submitted documentary evidence. The landlord has acknowledged receiving all of the tenant's submitted documentary evidence. I accept the undisputed affirmed testimony of both parties and find that both parties have been properly served as per sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the tenant entitled to an order cancelling the 10 Day Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of both parties, not all details of the 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 on March 1, 2010 on a fixed term tenancy ending on August 31, 2010 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The tenancy agreement displays a monthly rent of \$825.00 payable on the 1st day of each month. The landlord has provided copies of two notice(s) of a rent increase dated February 9, 2012 increasing the monthly rent from \$825.00 to \$860.00. The second notice is dated September 23, 2014 increasing the monthly rent from \$860.00 to \$881.00. The landlord has stated that the current monthly rent is \$881.00. A security deposit of \$412.50 was paid on February 6, 2010.

The landlord stated that the tenant was served with a 10 Day Notice dated December 2, 2015 on December 2, 2015 by posting it to the rental unit door. The notice states that the tenant failed to pay rent of \$881.00 that was due on December 1, 2015. The notice also displays an effective end of tenancy date of December 12, 2015.

The tenant stated in his direct testimony that the 10 Day Notice was received and that the entire monthly rent of \$881.00 was unpaid. The tenant clarified that he had a roommate until December who was responsible for paying ½ of the rent, but did not as he had moved out at the end of November 2015.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$872.00. The landlord clarified that the unpaid rent consisted of \$431.00 for December and \$441.00 for January as per the landlord's submitted copy of the tenant ledger. The tenant confirmed the amounts owed as his portion of the monthly rent is automatically paid for by the ministry.

Analysis

Section 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 tenant did not provide any evidence that he was entitled to deduct amounts for emergency repairs that she had conducted (pursuant to subsection 33(3)) or as a result of a prior order from the Residential Tenancy Branch.

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 testified that the tenant failed to pay all of the rent for December and January. The tenant admits that he did not pay all of December and January's rent.

As the tenant has failed to pay her rent in full when due, I find that the 10 Day Notice issued December 2, 2015 is valid and dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply. As the tenant's application to cancel the 10 Day Notice is dismissed, the landlord was entitled to possession of the rental unit on December 12, 2015, the effective date of the 10 Day Notice. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

The tenant admitted that he has not paid all of December and January's rent totalling, \$872.00. I find that the landlord is entitled to this amount. The landlord having been successful is entitled to recovery of the \$50.00 filing fee. I issue a monetary order in the landlord's favour in the amount of \$922.00, to enable the landlord to recover unpaid rent and the filing fee from the tenant.

Conclusion

The tenant's application is dismissed without leave to reapply.
The landlord is granted an order of possession.

I issue a monetary order in the landlord's favour in the amount of \$922.00 under the following terms:

Item	Amount
Unpaid December Rent	\$431.00
Unpaid January Rent	441.00
Recover Filing Fee	50.00
Total Monetary Order	\$922.00

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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 28, 2016

Residential Tenancy Branch

