



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF; CNR, PSF, FF, O

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 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.

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;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72; and
- an "other" remedy.

The tenant did not attend this hearing, although I waited until 1141 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he served the tenant with the dispute resolution package on 17 November 2015 by registered mail. The landlord provided me with a Canada Post tracking information that showed the same. On the basis of this evidence, I am satisfied

that the tenants was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Amendment For Rent Owing

Paragraph 64(3)(c) allows me to amend an application for dispute resolution.

At the hearing, the landlord asked to amend this application to include unpaid rent that accrued since the landlord filed his application. As the tenant reasonably ought to have known that these amounts were owed if he continued to occupy the rental unit, I have allowed the amendment as there is no undue prejudice to the tenant.

Disposition of Tenant's Claim for Failure to Appear

The landlord confirmed receipt of the tenant's dispute resolution package. The tenant failed to appear to provide evidence in support of his application. With the exception of the tenant's application to cancel the 10 Day Notice, the tenant has the onus of proving, on a balance of probabilities, his claims.

Rules 7.1 and 7.3 of the Rules of Procedure establish the consequences of failing to appear at a hearing at the scheduled time:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, 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 following portions of the tenant's claim dismissed without leave to reapply:

- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72; and
- an "other" remedy.

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? 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 landlord, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began 1 February 2008. The parties entered into a written tenancy agreement on 17 January 2008. The most recent monthly rent of \$1,260.00 was established 1 May 2015. The landlord continues to hold the tenant's security deposit in the amount of \$587.00, which was collected on 1 February 2008.

The landlord provided me with a copy of the tenancy agreement. The tenancy agreement was a poor copy and much of the type was illegible. I asked the landlord to send me a legible copy of this document.

On 2 November 2015, the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice was dated 2 November 2015 and set out an effective date of 12 November 2015. The 10 Day Notice set out that the tenant failed to pay \$1,455.00 in rent that was due on 1 November 2015. The notice was served by posting to the tenant's door.

On 2 December 2015, the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice was dated 2 December 2015 and set out an effective date of 12 December 2015. The 10 Day Notice set out that the tenant failed to pay \$1,440.00 in rent that was due on 1 December 2015. The notice was served by posting to the tenant's door.

On 2 January 2016, the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice was dated 2 January 2016 and set out an effective date of 12 January 2016. The 10 Day Notice set out that the tenant failed to pay \$2,325.00 in rent that was due on 1 January 2016. The notice was served by posting to the tenant's door.

I asked the landlord to provide me with an accounting of rent arrears. The landlord was unable to do so as his rent rolls were not digitized and he did not have a ledger of total arrears. The landlord testified that the last month for which the tenant was current on rent was August 2015. I asked the landlord to provide a rent ledger that set out how the tenant's rent arrears are determined. I ordered the landlord to send this ledger to me by fax and to serve a copy to the tenant.

The landlords provided me with a copy of the ledger showing the tenant had rent arrears of \$2,600.00 and late fees in the amount of \$150.00:

Item	Amount
August Rent	\$1,260.00
Payment (1 August 2015)	-400.00
August Late Fee	25.00
Payment (5 August 2015)	-400.00
Payment (25 August 2015)	-460.00
September Rent	1,260.00
Payment (2 September 2015)	-400.00
Payment (5 September 2015)	-600.00
September Late Fee	25.00
October Rent	1,260.00
Payment (1 October 2015)	-400.00
Payment (3 October 2015)	-600.00
October Late Fee	25.00
Payment (25 October 2015)	-400.00
November Rent	1,260.00
November Late Fee	25.00
Payment (9 November 2015)	-600.00
Payment (23 November 2015)	-300.00
December Rent	1,260.00
Payment (1 December 2014)	-400.00
December Late Fee	25.00
January Rent	1,260.00
January Late Fee	25.00
Total Owed	\$2,750.00

Analysis

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.

There is nothing in the evidence provided that indicates the tenant was entitled to deduct any amount from rent.

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.

On 2 November 2015, the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice was dated 2 November 2015 and set out an effective date of 12 November 2015. The 10 Day Notice set out that the tenant failed to pay \$1,455.00 in rent that was due on 1 November 2015. Pursuant to paragraph 90(c) of the Act, the notice was deemed received by the tenant on 5 November 2015, the third day after its posting. In order to cancel the notice, the tenant had until 10 November 2015 to pay the full amount of the outstanding rent. The tenant only made a partial payment within this timeframe.

As the tenant has failed to pay his rent in full when due, I find that the 10 Day Notice issued 2 November 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 15 November 2015, the corrected 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 uncontested evidence before me indicates that the tenant has rent arrears totalling \$2,600.00. The landlord is entitled to a monetary order for this amount.

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.

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.

Conclusion

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

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.

I issue a monetary order in the landlord's favour in the amount of \$2,063.00 under the following terms:

Item	Amount
Rent Arrears	\$2,600.00
Offset Security Deposit Amount	-587.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2,063.00

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.

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: January 15, 2016

Residential Tenancy Branch

