



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's Application: OPR, OPC, MNR, MNDC, FF

Tenant's Application: MT, CNR, FF

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the "Act").

The tenant is seeking more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on January 10, 2017 (the "10 Day Notice"); to cancel the 10 Day Notice; and to recover the filing fee from the landlord for the cost of their Application (the "Tenant's Application").

The landlord is seeking an order of possession for unpaid rent; a monetary order for unpaid rent; an order of possession for cause; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of their Application (the "Landlord's Application").

The landlord appeared at the teleconference hearing. The tenant did not attend the hearing which lasted 21 minutes. The landlord gave affirmed testimony. During the hearing the landlord was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the landlord's Application, Amendment to an Application for Dispute Resolution and Notice of Dispute Resolution Hearing was considered (the "Dispute Resolution Hearing Package").

The landlord testified that the tenant was served with the landlord's dispute resolution hearing package by registered mail. The landlord testified that the registered mailing

was sent to the tenant at the rental unit on January 25, 2017. Taking into account the undisputed testimony of the landlord, and in accordance with section 89 and 90 of the *Act*, I find that the tenant is deemed served with the dispute resolution hearing package as of January 30, 2017, the fifth day after the registered mailing. Furthermore, as the tenant's hearing for their Application was scheduled to be heard at the same time and date, I am satisfied that the tenant knew of this hearing.

Preliminary and Procedural Matters

Landlord's Application:

Upon review of the landlord's application I have determined that I will not deal with all the dispute issues the landlord has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the notices to end tenancy.

Therefore, I will not deal with the landlord's request for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. Accordingly, I dismiss the landlord's claim in this regard with leave to re-apply. I note this decision does not extend any applicable time limits under the *Act*.

As the tenancy will be ending on the basis of the landlord's 10 Day Notice, I do not need to address the landlord's request for an order of possession for cause. Accordingly, I dismiss the landlord's application in this regard.

Issue(s) to be Decided

- Is the tenant entitled to more time to make an application to cancel the landlord's 10 Day Notice?
- Should the landlord's 10 Day Notice be cancelled?
- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord testified that the tenant started a month to month tenancy on May 1, 2016 pursuant to a written tenancy agreement signed by the tenant on April 12, 2016. Rent is \$800.00 due on the first day of each month. The landlord received a security deposit in the amount of \$400.00.

The landlord testified that the tenant did not pay rent in the amount of \$800.00 for the month of January 2017.

The landlord testified that the tenant was served with a 10 Day Notice in person by leaving a copy with the tenant on January 10, 2017. The 10 Day Notice was dated January 10, 2017, with an effective move out date of January 20, 2017.

The landlord testified that the tenant did not pay the rent that was due within five days after service of the 10 Day Notice. The landlord testified that the tenant paid \$800.00 by email transfer on February 1, 2017 with a note that the payment was for rent due for the month of February, 2017. Rent due for the month of January 2017 remains unpaid.

The landlord is seeking an order of possession for unpaid rent.

The landlord is also seeking a total monetary order in the amount of \$800.00 for unpaid rent for the month of January 2017.

The landlord is also seeking recovery of the \$100.00 filing fee from the tenant for the cost of their application.

Analysis

Based on the undisputed documentary evidence and testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As this hearing dealt with the tenant's application and the tenant did not attend the hearing, I dismiss the tenant's application. In the absence of the tenant, the landlord's testimony was undisputed. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable.

I find that the tenant was required to pay rent in the amount of \$800.00 for the month of January 2017 and that they did not do so.

In accordance with section 88 of the *Act*, I find that the tenant was served with the 10 Day Notice on January 10, 2017. I also find that the 10 Day Notice required the tenant to vacate the rental unit on January 20, 2017.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within five (5) days granted under section 46(4) of the *Act* and that they did not dispute the 10 Day Notice within that 5 day period as the tenant's application was made after the 5 day period expired.

When a tenant's application to dispute a landlord's notice to end a tenancy is dismissed, s. 55 of the *Act* requires me to grant an order of possession if the landlord's notice to end a tenancy complies with section 52 of the *Act*.

I find that the 10 Day Notice complies with section 52 of the *Act* and is valid. As a result, I find the landlord is entitled to an order of possession.

I also find that the landlord is entitled to a monetary order in the amount of \$800.00 for unpaid rent for the month of January 2017.

As the landlord's application is successful, I find that the landlord is entitled to the \$100.00 filing fee for the cost of their application.

I allow the landlord to retain the security deposit in the amount of \$400.00 to be applied against the amounts owed by the tenant.

Based upon the foregoing, the landlord is entitled to a monetary order in the amount of \$500.00 as follows:

January 2017 unpaid rent	\$ 800.00
Filing Fee	\$ 100.00
Subtotal	\$ 900.00
Less Security Deposit	\$ 400.00
Total	\$ 500.00

Conclusion

I dismiss the tenant's application without leave to reapply and the tenancy will end on the basis of the 10 Day Notice.

I dismiss the landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement with leave to re-apply as it is unrelated to the balance of the landlord's application pertaining to unpaid rent.

I dismiss the landlord's application for an order for possession for cause as the tenancy will end on the basis of the 10 Day Notice.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective two days after service of this Order upon the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is granted a monetary order in the amount of \$900.00 for unpaid rent and the filing fee which must be served on the tenant as soon as possible. Should the tenant fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: February 15, 2017

Residential Tenancy Branch