



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	OPR OPL MNR MNSD FF
	Tenant:	CNR CNL MNDC RP

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord's Application was received at the Residential Tenancy Branch on March 21, 2017 (the “Landlord's Application”). The Landlord applied for the following relief pursuant to the *Act*:

- an order of possession for unpaid rent or utilities;
- an order of possession for landlord's use of property;
- a monetary order for unpaid rent or utilities;
- an order that the Landlord be permitted to keep all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

On behalf of the Landlord, M.V. testified the Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Tenant in person on March 21, 2017, with a witness present. The Tenant acknowledged receipt on that date. I find the Tenant was duly served with the Landlord's Application package on March 21, 2017.

The Tenant's Application was received at the Residential Tenancy Branch on March 8, 2017 (the "Tenant's Application"). The Tenant applied for the following relief pursuant to the *Act*:

- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- an order cancelling a notice to end tenancy for landlord's use of property;
- a monetary order for money owed or compensation for damage or loss; and
- an order that the Landlord return the Tenant's personal property.

The Tenant testified her Application package was served on the Landlord in person at the Landlord's home. However, she stated that the Landlord did not take the Application package when she entered the house so the Tenant left it by the back door. On behalf of the Landlord, M.V. confirmed the Application package was received by the Landlord, but that it was received late, contrary to Residential Tenancy Branch Rule of Procedure 3.14.

The Landlord was represented at the hearing by M.V. and S.V., although only M.V. provided oral testimony. The Tenant attended the hearing on her own behalf. All parties giving evidence provided a solemn affirmation.

Neither party raised any issue with respect to service or receipt of the documents upon which they intended to rely. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

On review of the parties' Applications, it became apparent that the most important issue to address was whether or not the tenancy would continue and whether or not the landlord was entitled to a monetary order for unpaid rent. The parties were informed that I would be exercising my discretion to sever the unrelated claims with leave to reapply, pursuant to Rule 2.3 of the Rules of Procedure. I find it appropriate to exercise my discretion to sever the Tenant's claim for money owed or compensation for damage or loss, and for return of personal property. These are not sufficiently related to the

reasons for issuing the notices to end tenancy. The Tenant is granted leave to reapply at a later date.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to an order of possession for landlord's use of property?
3. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
4. Is the Landlord entitled to an order permitting her to keep all or part of the security deposit or pet damage deposit?
5. Is the Tenant entitled to an order cancelling the notice to end tenancy for unpaid rent or utilities?
6. Is the Tenant entitled to an order cancelling the notice to end tenancy for landlord's use of property?

Background and Evidence

Both parties submitted into evidence a copy of the tenancy agreement between them. It confirms the tenancy began on November 1, 2016. Rent in the amount of \$900.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$450.00, which the Landlord holds.

On behalf of the Landlord, M.V. testified that the Tenant has not paid rent in full. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 2, 2017 (the "10 Day Notice"). At that time, rent in the amount of \$1,050.00 was outstanding. As indicated on the 10 Day Notice, M.V. confirmed it was served on the Tenant, in person, on March 2, 2017. M.V. also testified that rent for the month of April 2017 has not been received.

The testimony of M.V. with respect to payment of rent may be summarized as follows:

Month	Rent Paid	Rent Outstanding
December 2016	\$750.00	\$150.00
March 2017	\$0.00	\$900.00
April 2017	\$0.00	\$900.00
TOTAL:	\$750.00	\$1,950.00

In reply, the Tenant agreed she owes \$150.00 for December 2016 and \$900.00 for April 2017. She confirmed that she withheld April rent because of these dispute resolution proceedings. However, she testified she paid the Landlord \$825.00 on account of March 2017 rent in February 2017. However, I was not referred to any documents that confirmed payment of \$825.00 to the Landlord.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent or to dispute the notice by filing an application for dispute resolution.

In this case, I find the 10 Day Notice was served on the Tenant, in person, on March 2, 2017. The Tenant had until March 7, 2017, to pay rent in full or to dispute the notice by filing an application for dispute resolution. The Tenant acknowledged during her testimony that she has not paid rent in full. However, I find there is insufficient evidence before me to conclude the Tenant had a right to deduct rent. Accordingly, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant.

Further, although the Tenant claimed to have made a payment of \$825.00 for March 2017 rent, I find there is insufficient evidence before me to conclude the Tenant made the payment as alleged. Accordingly, I find the Landlord is entitled to a monetary award of \$1,950.00 for outstanding rent as claimed. Having been successful, the Landlord is also entitled to recover the \$100.00 filing fee. On behalf of the Landlord, M.V. requested that the Landlord be permitted to apply the \$450.00 security deposit to any monetary order I grant, which I allow.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$1,600.00, which is comprised of \$1,950.00 for unpaid rent and \$100.00 for recovery of the filing fee, less the \$450.00 security deposit held by the Landlord.

As the tenancy is ending based on the 10 Day Notice, it is not necessary for me to consider the parties' Application as they relate to the Two Month Notice to End Tenancy for Landlord's Use of Property, dated February 27, 2017, which was submitted into evidence by both parties. This aspect of the parties' Applications is dismissed.

Subject to the exercise of my discretion under Rule of Procedure 2.3, summarized under *Preliminary and Procedural Matters*, above, the Tenant's Application is dismissed.

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$1,600.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

Subject to the exercise of my discretion under Rule of Procedure 2.3, summarized under *Preliminary and Procedural Matters*, above, the Tenant's Application is dismissed.

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: April 7, 2017

Residential Tenancy Branch