



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR OPC MNR FF
For the tenant: CNC DRI ERP RP FF

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution (the “applications”) under the *Residential Tenancy Act* (the “Act”). The landlord applied for an order of possession for unpaid rent or utilities and for cause, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee. The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”), to dispute an additional rent increase, for an order for emergency repairs for health or safety reasons, for an order for regular repairs to the rental unit, and to recover the cost of the filing fee.

The landlord and the tenant attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all 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.

Both parties confirmed at the start of the hearing that they received the documentary evidence packages from each other and had the chance to review that evidence prior to the hearing. In addition, the tenant confirmed having received the landlord’s amendments to the landlord’s application. I find the parties were sufficiently served in accordance with the *Act* as a result.

Preliminary and Procedural Matters

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator and confirmed that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

The landlord was advised that due to the tenant continuing to occupy the rental unit that his claim for damages is premature and that his claim for damages is dismissed with leave to reapply as a result.

Issues to be Decided

- Did the tenant dispute the 10 Day Notice issued by the landlord?
 - If not, should the tenancy end based on an undisputed 10 Day Notice?
 - If yes, should the 1 Month Notice be cancelled or upheld?
- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- If the tenancy is continuing, should the remainder of the tenant's claim be severed pursuant to section 2.3 of the Rules of Procedure?

Background and Evidence

The parties agreed that a month to month tenancy began on September 15, 2016 and that the tenant continues to occupy the rental unit. The parties confirmed that a written tenancy agreement does not exist between the parties. The parties agreed that monthly rent of \$1,100.00 is due on the first day of each month and that the tenant paid a security deposit of \$550.00 at the start of the tenancy which the landlord continues to hold.

The landlord's monetary claim is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid portion of July 2017 rent	\$280.00
2. Unpaid August 2017 rent	\$1,100.00
3. Unpaid September 2017 rent	\$1,100.00
4. Unpaid October 1, 2017 rent	\$1,100.00
TOTAL	\$3,580.00

The landlord testified that the tenant failed to pay \$280.00 of July 2017 rent and that no rent was paid for August, September or October 2017 of \$1,100.00 for each of those months. The tenant claimed she paid the entire amount of July 2017 rent but did not submit any documentary evidence to support that she paid \$1,100.00 for July 2017 rent such as a copy of her bank

statement or a receipt. In addition, the tenant confirmed that she did not pay rent for August, September or October 2017 but blames the landlord's spouse for not accepting the rent payment on the first day of the month. The tenant testified that after the first day of the month she did not make any further attempt to pay rent for that month. The landlord denied that any attempts to pay rent for August, September or October were made by the tenant and that she is using his wife just as an excuse.

Regarding the 10 Day Notice, the tenant confirmed being served with the 10 Day Notice on October 7, 2017 on October 7, 2017 and did not file to dispute the 10 Day Notice as she assumed that all matters would be dealt with at this hearing. The effective vacancy date listed on the 10 Day Notice is November 1, 2017. The tenant continues to occupy the rental unit.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

10 Day Notice – Firstly, the tenant did not amend her application to add the dispute of the 10 Day Notice to her application. As a result, I find the 10 Day Notice was not disputed by the tenant. Therefore, pursuant to section 46 of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ends on November 1, 2017 as the tenant did not file and application or amend her current application to add a dispute of the 10 Day Notice. Therefore, I find the tenancy ends today, November 1, 2017 at 1:00 p.m.

Given the above, I do not find it necessary to consider the 1 Month Notice as the tenancy ended based on an undisputed 10 Day Notice. As the tenancy ends today, November 1, 2017, I dismiss the tenant's application in full as the tenancy ends today.

Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[My emphasis added]

As a result of the above and taking into account that I find the 10 Day Notice complies with section 52 of the *Act*, I grant the landlord an order of possession effective **two (2) days** after service on the tenant as the tenant continues to occupy the rental unit without paying rent.

Monetary claim - Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. There is no dispute that rent is due on the first day of each month. Based on the above, and as the tenant has the onus of proof to prove that rent was paid when a 10 Day Notice is issued, I find that the tenant has provided no documentary evidence to support that the \$280.00 amount of unpaid July 2017 rent as claimed by the landlord was actually paid. Therefore, I find the tenant has provided insufficient evidence and that the landlord has met the burden of proof as a result in his full monetary claim of **\$3,580.00** in unpaid rent as claimed. I find the tenant's testimony that she attempted to pay rent on the first day of the month and on no date thereafter for the months of August, September and October to support insufficient attempts to pay the rent. It is up to the tenant to pay rent, either in cash, post-dated cheques or electronic transfer of funds however it is not up to the landlord to locate the tenant to be paid the monthly rent. Given the above, I find the tenant breached section 26 of the *Act* by failing to pay rent as required.

During the hearing, the landlord requested to have the security deposit offset from the amount of rent owed if he was so entitled under the *Act*.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$100.00** filing fee.

Monetary Order – I find the landlord has established a total monetary claim of **\$3,680.00** comprised of \$3,580.00 owing for unpaid rent as noted above plus the recovery of the cost of the \$100.00 filing fee.

Pursuant to section 72 of the *Act*, I **authorize** the landlord to retain the tenant's full security deposit of \$550.00 which includes \$0.00 in interest in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$3,130.00**.

Conclusion

The tenant's application fails and is dismissed in full

The landlord's application is fully successful. The landlord has been granted an order of possession effective two (2) days after service on the tenant. The tenancy ends today, November 1, 2017. The tenants must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has established a total monetary claim of \$3,680.00 as described above. The landlord has been authorized to retain the tenant's full security deposit of \$550.00 which includes \$0.00 in interest in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$3,130.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: November 1, 2017

Residential Tenancy Branch