



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR FF / CNR DRI OLC FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent and/or utilities pursuant to section 55;
- a monetary order for unpaid rent, utilities and damage(s) pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- an order regarding a disputed additional rent increase pursuant to section 43;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:30 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to provide testimony, to present evidence and to make submissions.

The landlord’s agent testified that on March 15, 2018, a copy of the landlord’s Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. The landlord provided a registered mail receipt and tracking number in support of service. The landlord’s secondary application (file # noted on the cover page

of his decision) was served by registered mail on April 12, 2018 and an amendment for that application was served in person on May 4, 2018.

Based on the above evidence, I am satisfied that the tenant was served with the landlord's Applications for Dispute Resolution including the Amendment pursuant to sections 89 & 90 of the Act. Additionally, as this hearing was initially scheduled in response to the tenant's own application, the tenant ought to have been aware of the hearing date and time.

As the tenant failed to participate in this hearing, the tenant's application is dismissed in its entirety without leave to reapply. The hearing into the landlord's applications proceeded in the absence of the tenant.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

I am exercising my discretion to dismiss the landlord's application pertaining to monetary compensation for damages with leave to reapply as these matters are not related to the claims for an order of possession and monetary compensation for unpaid rent and/or utilities. Leave to reapply is not an extension of any applicable time limit.

Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award for unpaid rent and/or utilities?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The tenancy began on October 1, 2017 with a monthly rent of \$450.00 payable on the 1st day of each month. The tenant paid a security deposit of \$225.00 at the start of the tenancy which the landlord continues to hold. The rental unit is a single room in a three bedroom residential house. As per the tenancy agreement; there were four parties named on one tenancy agreement for the three separate rooms for a total rent of \$1800.00 per month. In a previous related decision (file number(s) quoted on the cover

page of this decision), the Arbitrator found that each of the parties were not co-tenants but rather had separate tenancy agreements with the landlord.

The landlord's agent testified that on March 2, 2018 the tenant was personally served with the 10 Day Notice. The 10 Day Notice indicated that the tenant failed to pay rent in the amount of \$900.00 that was due on February 1, 2018. The landlord's agent testified that this included the \$450.00 rent for the months of February and March 2018.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated on the 10 Day Notice within five days of service of the Notice.

The landlord's monetary claim is for outstanding rent in the amount of \$1425.00. The landlord testified that this includes outstanding rent as of the date of the hearing as follows:

February 2018:	\$100.00
March 2018:	450.00
April 2018:	425.00
May 2018:	<u>450.00</u>
	\$1425.00

The landlord's agent explained that the tenant was credited \$25.00 for April 2018 rent as a result of a previous decision.

The landlord is also claiming an amount of \$715.93 for outstanding utilities. The landlord's agent submits that as per the tenancy agreement, the tenant was responsible for 25% of the utilities and the tenant has failed to pay any utilities since the beginning of the tenancy. The landlord submitted a monetary order worksheet with a breakdown of the outstanding utilities as well as copies of bills and demand letters sent to the tenant.

Analysis

As the tenant filed an application to dispute the 10 Day Notice, I am satisfied that the tenant received the 10 Day Notice in person on March 2, 2018 as submitted by the landlord.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or

dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants application must be dismissed as the tenant failed to attend this hearing and provide evidence to support his application.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the Act.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

I find that the tenant was obligated to pay monthly rent in the amount of \$450.00 but failed to pay rent as claimed by the landlord. I accept the landlord's uncontested testimony and evidence and award the landlord \$1425.00 for outstanding rent and \$715.93 for outstanding utilities.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$2240.93.

The landlord continues to hold a security deposit of \$225.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$2015.93.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2015.93. Should the tenant 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 22, 2018

Residential Tenancy Branch