



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, MT
 CNR, MT
 MNDCL, MNRL, OL, OPR, FFL

Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), for an extension of time to dispute the 10 Day Notice and for monetary compensation. The Landlord applied for an Order of Possession based on a 10 Day Notice, for monetary compensation, for compensation for unpaid rent, for “other” issues, and for the recovery of the filing fee paid for their Application for Dispute Resolution.

The Landlord and two agents (the “Landlord”) were present for the teleconference hearing, as was the Tenant and an occupant of the rental unit (the “Tenant”). The parties confirmed that the Notice of Dispute Resolution Proceeding package and a copy of each party’s evidence was served as required. As neither party brought up any concerns regarding service, I find that both parties were duly served in accordance with the *Residential Tenancy Branch Rules of Procedure* and the *Act*.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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 Matters

The Tenant filed two Applications for Dispute Resolution. The first application was filed on December 18, 2018 in which she applied to cancel the 10 Day Notice, for an extension of time to dispute the 10 Day Notice and for monetary compensation. The second application was filed on December 24, 2018 in which the Tenant applied to dispute the 10 Day Notice and for an extension of time to dispute the notice.

The Tenant was asked to clarify the two applications during the hearing and she was unsure as to why two separate applications had been filed. She confirmed that she was applying to dispute the 10 Day Notice, for an extension of time, as well as monetary compensation.

The Tenant also submitted an amendment form on December 27, 2018 to state her monetary request of \$500.00 and another amendment form on January 8, 2019 to change the monetary amount requested to \$1,156.00. In this decision, I will consider the Tenant's application to dispute the 10 Day Notice, to seek monetary compensation and for an extension of time to dispute the 10 Day Notice. As the claims of both applications are regarding the same 10 Day Notice, this decision will resolve both of the Tenant's applications, as well as the claims on the Landlord's application.

Regarding the Landlord's application, in addition to requesting an Order of Possession, the Landlord applied for monetary compensation, compensation for unpaid rent and "other" claims not specified. During the hearing, the Landlord confirmed that they were seeking an Order of Possession, compensation for unpaid rent and the recovery of the filing fee and had no further claims. As such, the remainder of the Landlord's claims will not be considered. The Landlord's application was amended to remove the additional claims. Both parties are at liberty to file a new Application for Dispute Resolution should they have any outstanding claims from this tenancy.

The Landlord initially applied for \$1,500.00 in unpaid rent but stated at the hearing that they are seeking an additional \$2,000.00 due to not receiving January or February 2019 rent. I find it reasonable that they would be seeking an additional two months of rent while waiting for the Dispute Resolution proceeding and therefore amend the Landlord's application to include an additional \$2,000.00 in their monetary claim. These amendments were made pursuant to Section 64(3)(c) of the *Act*.

Issues to be Decided

Should the Tenant be granted an extension of time to dispute the 10 Day Notice?

Should the 10 Day Notice to End Tenancy for Unpaid Rent be cancelled?

If the 10 Day Notice to End Tenancy for Unpaid Rent is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be awarded monetary compensation?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties agreed that the tenancy was to begin on September 1, 2018 but the Tenant moved in on August 25, 2018. A security deposit of \$500.00 was paid at the outset of the tenancy. Monthly rent is \$1,000.00, due on the first day of each month.

On December 11, 2018 the Landlord served the Tenant in person with a 10 Day Notice. Two 10 Day Notices were submitted into evidence, one dated December 1, 2018 and one dated December 11, 2018. The Landlord clarified that they served the first one on December 1, 2018 but were advised that this was served too early. Due to this, they withdrew the first 10 Day Notice and served a new one on December 11, 2018. They confirmed that the 10 Day Notice dated December 11, 2018 is the only notice in dispute. The Tenant confirmed receipt of this notice on December 11, 2018.

The 10 Day Notice dated December 11, 2018 states that \$1,500.00 was unpaid as due on December 1, 2018, with \$500.00 unpaid for November 2018 and \$1,000.00 unpaid for December 2018. The effective end of tenancy date was stated as December 21, 2018.

The Landlord testified that they are owed a total of \$3,500.00 in unpaid rent. They stated that they received \$500.00 for November 2018 and have not received any rent since then, leaving \$500.00 outstanding for November 2018, and \$1,000.00 each month for December 2018, January 2019 and February 2019. The Landlord submitted a Monetary Order Worksheet outlining the unpaid rent they are claiming, which included rent owing up to January 2019. However, the Landlord stated that since then they have also not been paid for February 2019 in the amount of \$1,000.00.

The Landlord submitted that the Tenant attempted to pay \$200.00 on December 17, 2018 and \$300.00 on December 19, 2018. They stated that these amounts were not accepted as the Landlord wanted the full rent amount as due on the first of each month and not partial payments towards the money owing.

The Tenant stated that the Landlord did not provide receipts for rent paid, so she was sometimes not sure if rent was paid or not. She stated that she went to the Landlord's door on December 15, 2018 with \$1,500.00 cash, but he would not accept it. The Tenant submitted a Monetary Order Worksheet in which she states that \$1,500.00 was refused on December 18, 2018.

The Landlord included in evidence a letter from the Tenant or the second occupant of the rental unit dated November 19, 2018 which states that the Tenant will move March 31, 2019 and the rent will be paid if a receipt is provided.

The Tenant agreed that she paid \$500.00 towards rent in November 2018 and that she asked for the security deposit to be put towards the remainder of the rent owing. She stated that she has rent for January 2019 but did not attempt to pay it. She also stated that she did not pay February 2019 rent due to the dispute resolution proceeding occurring in February 2019.

Later in the hearing the Tenant stated that she acknowledged that December 2018 rent was not paid as she thought it had been due to not receiving receipts.

The Landlord stated that they were never offered \$1,500.00 in cash and instead that they turned down an offer of \$200.00 and \$300.00 on December 17 and December 19, 2018. The Tenant testified that she never tried to pay rent in the amount of \$200.00 or \$300.00.

When asked about the Tenant's request for an extension of time to dispute the 10 Day Notice, the Tenant stated that her application was filed within 3 days, but that she would like an extension of time to move out of the rental unit.

The Tenant also applied for monetary compensation in the amount of \$656.50 which she stated was \$11.50 for sending registered mail to the Landlord, \$45.00 for the cost of using a laundromat when the Landlord would not allow them access to the laundry, \$500.00 for lawyer's fees and \$100.00 for the filing fee.

On December 27, 2018 the Tenant submitted an amendment form to state the monetary amount claimed as \$500.00. A second amended form was submitted on January 8, 2019 and the monetary claim was increased to \$1,156.00. However, during the hearing the Tenant stated that she was claiming a total amount of \$656.50.

Analysis

Section 46(4) of the Act states the following:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect,
 - or
 - (b) dispute the notice by making an application for dispute resolution.

The Tenant confirmed that she received the 10 Day Notice in dispute on December 11, 2018. She filed two applications to dispute the notice; one on December 18, 2018 and one on December 24, 2018. Although the Tenant claimed that she filed within three days, the applications submitted through Service BC confirm the date that the Tenant applied. The first Application for Dispute Resolution was filed on December 18, 2018, which is 7 days after receipt of the 10 Day Notice and therefore not within the timeframe provided by the *Act*.

Although the Tenant applied for an extension of time to dispute the notice, I do not find sufficient evidence to establish that she was unable to file the application in time and that there were extenuating circumstances that prevented her from doing so.

As stated in Section 66(1) of the *Act*, a time limit may be extended in exceptional circumstances. The Tenant stated that she needed more time to move, but did not provide any testimony or evidence regarding exceptional circumstances that prevented the application from being filed on time.

I also do not have sufficient evidence before me to establish that the outstanding rent was paid within 5 days of receiving the 10 Day Notice. The Tenant agreed that \$500.00 was paid for November 2018 and no rent was paid for December 2018. Although both parties agreed that the Tenant attempted to pay some amount of the rent owing in December 2018, the Landlord stated that the first attempt was \$200.00 on December 17, 2018. Although the Tenant stated that she attempted to pay the full amount on December 15, 2018, the written information in the Tenant's application claims she

attempted to pay on December 18, 2018 which is more than 5 days after receipt of the 10 Day Notice.

However, while the Landlord should have accepted *any* payment towards the rent owing to reasonably minimize potential losses, I still find that the outstanding rent was not paid within 5 days as stated in Section 46(4) of the *Act*. I also find it unlikely that had the Tenant attempted to pay the full amount of rent owing that the Landlord would have refused this.

Regardless of the parties' disagreement over how much the Tenant attempted to pay, I do not have evidence before me that the rent was paid within 5 days or that the Tenant disputed the notice within 5 days. Therefore, I find that the Tenant was not in compliance with Section 46(4) of the *Act*.

Accordingly, Section 46(5) of the *Act* applies which states the following:

- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

As the Tenant is conclusively presumed to have accepted that the tenancy ends pursuant to Section 46(5) of the *Act*, their applications to cancel the 10 Day Notice are dismissed. Pursuant to Section 55(1) of the *Act*, the Landlord is entitled to an Order of Possession. I grant the Landlord a 2-day Order of Possession to be served on the Tenant.

The Tenant has claimed a total of \$656.50. The Tenant claimed \$11.50 in registered mail costs, however registered mail costs may be incurred by both parties through the dispute resolution process and are not costs that are recoverable from the other party. As such, I decline to award this amount.

For the \$45.00 charged for laundromat costs and \$500.00 for legal fees, the Tenant did not submit any documentary evidence to confirm that she paid these amounts and that they were incurred due to a breach of the *Act* by the Landlord. As such, I am not satisfied that the Tenant is owed these amounts and decline to award them.

The Tenant also claimed \$100.00 for the recovery of the filing fee, although this was not requested on either of the Applications for Dispute Resolution that she filed. However, regardless of whether it was requested, as the Tenant was not successful with her Application for Dispute Resolution, I decline to award this amount. The Tenant's monetary claims are dismissed, without leave to reapply.

As for the Landlord's claim for unpaid rent, I accept the testimony of both parties that half of the rent was unpaid for November 2018 and that no rent was paid for December 2018, January 2019 and February 2019. As stated in Section 26 of the *Act*, a tenant must pay rent when due as per the tenancy agreement. The parties agreed that rent is due on the first day of each month in the amount of \$1,000.00. Therefore, I find that the Tenant breached the *Act* by not paying the rent and the Landlord is entitled to compensation for the outstanding rent amount.

As the Landlord was successful with the Application for Dispute Resolution, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Landlord may retain the security deposit towards the total amount owing. Pursuant to Section 67 of the *Act*, I find that the Landlord is entitled to a Monetary Order in the amount outlined below:

November 2018 rent	\$500.00
December 2018 rent	\$1,000.00
January 2019 rent	\$1,000.00
February 2019 rent	\$1,000.00
Filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$500.00)</i>
Total owing to Landlord	\$3,100.00

Conclusion

The Tenant's Applications for Dispute Resolution are dismissed, without leave to reapply.

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on 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.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$3,100.00** for rent owed for November 2018, December 2018, January 2019 and February 2019 and for the recovery of the filing fee for the application. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. 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: February 06, 2019

Residential Tenancy Branch