



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR, ERP, MNDCT, OLC, PSF, RP, RR
Landlord: FFL, MNRL, OPC, OPR

Introduction

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

The Tenant’s Application for Dispute Resolution was made on February 2, 2019, (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) dated January 26, 2019;
- an order for emergency repairs;
- a monetary order for damage or compensation;
- an order that the Landlord comply with the *Act*, Regulation or Tenant Agreement;
- an order for the Landlord to provide services or facilities required by the *Act* or law;
- an order for regular repairs; and
- an order to reduce the rent for repairs agreed upon but not provided

The Landlord’s Application for Dispute Resolution was made on February 8, 2019, (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for rent or utilities;
- an order of possession for cause;
- an order of possession for unpaid rent; and
- an order granting the return of the filing fee

The hearing was scheduled for 11:00 AM on March 18, 2019 as a teleconference hearing. Only the Landlord appeared and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only persons who had called into this teleconference.

The Landlord testified the Application and documentary evidence package were served to the Tenant in person on February 9, 2019. Based on the oral and written submissions of the Landlord, and in accordance with sections 89 and 90 of the Act I find the above documents were sufficiently served for the purposes of the Act.

The Landlord was given the opportunity to present 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.

I note that Section 55 of the Act requires that when a Tenant submits an Application seeking to cancel a Notice to End Tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a Notice to End Tenancy that is compliant with Section 52 of the Act.

Preliminary Matters

Rule 10.1 of the Rules of Procedure provides as follows:

“The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.”

Accordingly, in the absence of anyone appearing on behalf of the Tenant, I order the hearing continue in absence of the Tenant.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section pursuant to Sections 46 and 55 of the *Act*?
2. Is the Landlord entitled to an order of possession for cause, pursuant to Sections 47 and 55 of the *Act*?
3. Is the Landlord entitled to a monetary order relating to unpaid rent, pursuant to Section 67 of the *Act*?
4. Is the Landlord entitled to the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord testified that the tenancy between the parties started on August 1, 2018. Rent in the amount of \$1,200.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$600.00 to the Landlord.

The Landlord testified that he served the Tenant the 10 Day Notice dated January 26, 2019 with an effective date of February 5, 2019 by posting it on the Tenant's door on January 26, 2019. The Landlord submitted a picture of the 10 Day Notice attached to the Tenant's door. The 10 Day Notice was for unpaid rent in the amount of \$2,400.00 for the month of December 2018 and January 2019. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord testified that the Tenant has also failed to pay rent when due for February and March 2019 as well. The Landlord is seeking an order of possession as well as monetary compensation in the amount of \$4,800.00 for unpaid rent.

The Landlord also testified that he served the Tenant a One Month Notice for Cause (the "One Month Notice") dated February 9, 2019 in person on the same day. The One Month Notice was served to the Tenant in relation to multiple late payments of rent.

Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the *Act* states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Section 46 of the *Act* states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

In relation to the 10 Day Notice dated January 26, 2019, the Landlord testified that he served the 10 Day Notice to the Tenant by posting it to the Tenant's door on January 26, 2019. Therefore, pursuant to section 88 of the *Act*, I find the 10 Day Notice was sufficiently served for the purposes of the *Act*.

I find that the Tenant failed to pay the rent due for the months of December 2018, January, February and March 2019 in the amount of \$4,800.00 as required under the tenancy agreement, within five days of receiving the 10 Day Notices. I find that the Tenant breached Section 26 of the *Act* by failing to pay rent when due.

Furthermore, as the Tenant did not appear at the time of the hearing to dispute the 10 Day Notice, I dismiss the Tenant's application to cancel the 10 Day Notice dated January 26, 2019 without leave to reapply.

Under Section 55 of the *Act*, when a Tenants Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under Section 52 of the *Act* regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to Section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord has also applied for an order of possession for cause relating to the Tenant repeatedly being late paying rent. As the Landlord was successful in his Application for an order of possession relating to a 10 Day Notice, I find that this portion of the Landlord's Application is now moot.

I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$4,800.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate

in the circumstances to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$4,300.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$4,800.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$600.00)
TOTAL:	\$4,300.00

Conclusion

The Tenant's Application is dismissed without leave to reapply. The tenant has breached the tenancy agreement by not paying rent. The Landlord is granted an order of possession effective 2 days after service on the Tenant. The order should be served as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord is granted a monetary order in the amount of \$4,300.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: March 19, 2019

Residential Tenancy Branch