



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenants: CNR, OLC, LRE
For the landlords: OPR, MNR-S, MND-S, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlords;
- an order requiring the landlords to comply with the Act, regulations, or tenancy agreement; and
- an order suspending or setting conditions on the landlord's right to enter the rental unit.

The landlords applied for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) served to the tenant;
- a monetary order for unpaid rent;
- compensation for alleged damage to the rental unit by the tenant;
- authority to keep the tenant's security deposit and pet damage deposit to use against a monetary award; and
- recovery of the filing fee.

The landlords attended the hearing; the tenant did not attend.

The landlords submitted documentary evidence showing that the tenant was served with their Application for Dispute Resolution, evidence, and Notice of Hearing

(application package) by registered mail. The landlords provided the Canada Post receipts showing the tracking number of the registered mail, which is located on the style of cause page of this Decision.

Based upon the landlords' oral and written submissions, I accept the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act, and the hearing proceeded on the landlord's application in the tenant's absence.

Thereafter the landlords were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters

Despite having her own hearing scheduled for 11:00 a.m. on October 19, 2020, and the landlords' application and notice of hearing, the tenant failed to attend the hearing. The hearing continued for 21 minutes.

Rules 7.3 and 7.4 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, **in the absence of any evidence or submissions from the tenant, I order her application dismissed, without leave to reapply.**

Additionally, the landlords were advised that due to the tenant continuing to occupy the rental unit that their claim for damages is premature. As a result, their claim for damages is dismissed, **with leave to reapply as a result.**

Issue(s) to be Decided

Are the landlords entitled to an order of possession of the rental unit due to unpaid rent, a monetary order for unpaid rent, and recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted a written tenancy agreement showing a month-to-month tenancy with a start date of March 1, 2020, monthly rent of \$1,250, due on the 1st day of the month, and a security deposit of \$625 and pet damage deposit of \$250 being paid by the tenant to the landlords.

The landlords submitted evidence that on September 2, 2020, they served the tenant with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$1,250 owed as of September 1, 2020. The effective vacancy date listed on the Notice was September 11, 2020. The Notice was filed into evidence.

The tenant did file her application to dispute the Notice within the 5 days allowed, as her application was made on September 4, 2020.

The landlords submitted that since the Notice was issued to the tenant, the tenant has not made any further rent payments and owes for the months of September and October 2020, or \$1,250 each.

The landlords' monetary claim included a potential loss of rent for October and November 2020, in addition to the claim for damages.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

The Notice informed the tenant that she had five days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch (RTB) to dispute the Notice or to pay the rent in full; otherwise the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenant was served a 10 Day Notice, that the tenant owed the unpaid rent listed and did not pay the outstanding rent within five days of service.

While the tenant filed an application for dispute resolution in dispute of the Notice, she did not attend the hearing to offer rebuttal evidence to prove the rent was paid.

Therefore, pursuant to section 55(2)(b) of the Act, I find that the landlords are entitled to and I grant an order of possession for the rental unit effective 2 days after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, such as bailiff costs and filing fees, are recoverable from the tenant.

I also find that the landlords submitted sufficient evidence to show that the tenant owed, but did not pay, the rent of \$1,250 for the months of September and October 2020, and has not vacated the rental unit. I therefore find the landlords are entitled to a monetary award of \$2,500, for unpaid rent.

I also grant the landlords a monetary award of \$100 for recovery of the filing fee paid for their application.

I therefore find the landlords are entitled to a monetary award of \$2,600, comprised of unpaid rent of \$2,500 and the \$100 filing fee paid by the landlords for this application.

At the landlords' request, I direct the landlords to retain the tenants' security deposit of **\$625 and the pet damage deposit of \$250** in partial satisfaction of their monetary award of \$2,600.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$1,725.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application is dismissed without leave to reapply as she failed to attend the hearing.

The landlords' application for an order of possession of the rental unit and a monetary order for unpaid rent, as described above, and the filing fee has been granted.

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: October 19, 2020

Residential Tenancy Branch