



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR MT

Landlord: OPR MNR MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on October 30, 2020. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlords and the Tenant both attended the hearing. The Tenant confirmed that she received the Landlords' application, Notice of Hearing, and evidence. The Tenant did not take issue with the service of those documents. I find the Landlord sufficiently served the Tenant with their application and evidence.

The Tenant stated that she did not serve her application, Notice of Hearing, or any of her evidence to the Landlords. The Tenant stated she didn't know she had to. I note that each party filed their own application, and each party was given a Notice of Dispute Resolution Proceeding, which contained instructions for how to ensure the hearing proceeds on track. The Tenant acknowledged getting the Notice of Dispute Resolution after she filed her application, but did not read it, or follow up on the obligations she had to serve her documents on the other party (the Landlords). As stated in the hearing, the Tenant was required, as an applicant, to serve her Notice of Dispute Resolution and her evidence to the other party. As she has not done any of this, I dismiss her application, in full, without leave to reapply. The Tenant did not present any reasons why she was unable to serve her documentation.

Both parties were provided 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.

Preliminary Matters - Amendment

The Landlords have requested to amend their application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I hereby amend the Landlord's application accordingly.

Preliminary Matters – Tenant's application

As stated above, the Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) is dismissed, in full, without leave to reapply. The Tenant failed to diligently pursue her application and serve her application, notice of hearing, and evidence in accordance with the Act, and the Rules of Procedure.

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]

Under section 55 of the *Act*, when a Tenant's 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, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice issued by the Landlord meets the requirements for form and content and the Landlord is entitled to an order of possession, effective 2 days after service.

Issue(s) to be Decided

- Are the Landlords entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

Both parties agreed that rent in the amount of \$2,000.00 is due on the first of each month and that the Landlords hold a security and pet deposit, totalling \$2,000.00.

The Landlords have provided a detailed accounting spreadsheet showing the long history of late and missed rent payments, dating back over 2 years. The Landlords stated that they were hoping to proceed with an eviction much sooner but the COVID restrictions made it difficult for several months. However, now that they are entitled to end a tenancy for unpaid rent that had accumulated prior to the pandemic start (March 2020), the Landlords wish to end this tenancy and collect what they are owed. The Landlords provided a detailed account printout, showing what amounts were paid, when, by what method, and by which Tenant. The Landlord also split the amounts owing into pre-COVID, as well as post-COVID amounts in an attempt to set up a payment arrangement, which ultimately did not work, since the Tenant has failed to pay any rent or the repayment amounts for the last month.

The Landlord feels the spreadsheet, which was provided into evidence, clearly shows that \$7,750.00 is currently owed for unpaid rent and late fees. The Tenant stated numerous times she "doesn't do numbers" and doesn't have any evidence to disprove what the Landlord has laid out in the spreadsheet. The Tenant did not have any admissible evidence or testimony to contradict what is owed, as per the Landlords' spreadsheet from early October 2020.

Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I find there is insufficient evidence the Tenant had any right under the *Act* to withhold rent. With respect to the Landlord's request for a Monetary Order for unpaid rent, I find there is sufficient evidence from the Landlord's documentary evidence and testimony before me to demonstrate that the Tenant owes and has failed to pay \$7,750.00 in accumulated unpaid rent and late fees, which span back over the past 2 years. I note the Tenant did not present any evidence nor did she provide any explanation as to how the amounts listed by the Landlords are not accurate. I find the Landlords have provided a more detailed and compelling account of what is owed, and I find the Tenant is liable for the full amount of the Landlord's claim, \$7,750.00.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlords were substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security and pet deposit, currently held by the Landlords, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$7,750.00
Other:	
Filing fee	\$100.00
Less:	
Security and pet Deposit currently held by Landlord	(\$2,000.00)
TOTAL:	\$5,850.00

Conclusion

Pursuant to section 55 of the Act, the Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$5,850.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: October 30, 2020

Residential Tenancy Branch