



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR
For the landlord: OPRM, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for cancellation of the landlord's 10 day Notice to End Tenancy for unpaid Rent or Utilities , pursuant to section 46 of the Act.

The landlord application pursuant to the Act is for:

- an order of possession under the 10 day Notice to End Tenancy for unpaid Rent or Utilities (the Notice), pursuant to sections 46 and 55;
- a monetary order for compensation for unpaid rent and losses, pursuant to section 67; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing. The landlord was assisted by advocate RM. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Preliminary Issue – Amendment of monetary claim

At the hearing the landlord sought to amend her application for \$7,000.00 in unpaid rent and damages caused by the tenant to include an additional \$3,300.00 for the unpaid rent of September, October and November 2020.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$10,300.00.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. If the tenant's application is dismissed, is the landlord entitled to an order of possession?
3. Is the landlord entitled to a monetary order for unpaid rent and losses?
4. Is the landlord authorized to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence provided by the parties, including documentary evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the parties; it is their obligation to present the evidence to substantiate their claims.

Both parties agreed the tenancy started on December 20, 2015. Rent is \$1,100.00 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$465.00 was collected and the landlord holds it in trust.

Both parties also agreed the tenant received the Notice on September 14, 2020. The tenant continues to live in the rental unit. The Notice is dated September 14, 2020 and the effective date is September 19, 2020. The Notice is for failure to pay rent in the amount of \$1,100.00 due on September 01, 2020.

The tenant affirmed she did not pay September's rent. At a later point in the hearing the tenant stated she paid September's rent with cash, but she does not have a receipt.

The landlord said the tenant has not paid rent since July 2020.

Both parties also agreed the tenant received the repayment plan for affected rent on October 09, 2020 and failed to make payments. The repayment plan is not part of this application.

The landlord is asking for a monetary order for unpaid rent for September, October and November's 2020 rent in the total amount of \$3,300.00.

The landlord is asking for a monetary order for damages caused by the tenant to the rental unit in the total amount of \$7,000.00. The carpet was in good conditions and the rental unit was painted when the tenancy started. The tenant damaged the carpet and the walls are dirty. The landlord affirmed she has a quote for \$4,500.00 for the carpet replacement and a verbal quote for \$3,000.00 for painting the rental unit.

The tenant stated the carpet has regular wear and tear and the walls are not dirty.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Order of Possession and Monetary Order for Unpaid Rent

I accept both parties uncontested testimony that the tenant must pay monthly rent of \$1,100.00 on the first day of the month.

I find the tenant's testimony about payment of September's rent has no credibility, as she first said she did not pay rent and later changed her testimony. Based on the landlord's convincing testimony, I find the tenant is in arrears for \$3,300.00 for rent due on September, October and November 01, 2020.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

Pursuant to section 53(2) of the Act, I correct the effective date of the Notice to September 24, 2020, ten days after the tenant received the Notice. I find the Notice is in accordance with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the effective date and is in the approved form.

Monetary Order for Damages

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The parties offered conflicting testimony about damages to the rental unit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The landlord did not provide any documentary evidence to support her claim for a monetary order for damages to the rental unit. The landlord did not call any witnesses.

As such, I find the landlord failed to prove, on a balance of probabilities, that the tenant caused damage to the rental unit. The landlord's application for a monetary order for damages to the rental unit is dismissed without leave to reapply.

Filing fee

As the landlord was successful in her application, I find that the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord. I order the landlord to retain the \$465.00 security deposit.

In summary:

September, October and November's 2020 rent	\$3,300.00
Filing fee	\$100.00
Sub-total	\$3,400.00
Security deposit	-\$465.00
Monetary award	\$2,935.00

I warn the tenant that she may be liable for any costs the landlord incurs to enforce the order of possession.

Conclusion

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 38 and 67 of the Act, I authorize the landlord to retain the \$465.00 security deposit and grant the landlord a monetary order in the amount of \$2,935.00.

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: November 20, 2020

Residential Tenancy Branch