



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR, MT, LRE
For the landlord: OPR, MNR-S, MNDC-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 the following:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord;
- an order extending the time to file an application disputing the Notice issued by the landlord; and
- an order suspending or setting conditions on the landlord's right to enter the rental unit.

The landlord applied for the following:

- an order of possession of the rental unit pursuant to the Notice served to the tenant;
- a monetary order for unpaid rent;
- compensation for a monetary loss or other money owed;
- authority to retain the tenant's security deposit; and
- to recover the cost of the filing fee.

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

The landlord said that he served the tenant with his Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by attaching it to the tenant's door on or about November 6, 2020. The landlord said the service was witnessed.

Based upon the landlord's undisputed submissions, I accept the tenant was served notice of this hearing in a manner complying with section 89(2) of the Act, and the hearing proceeded on the landlord's application in the tenant's absence.

The landlord also said he was unaware the tenant had an application set for hearing on the same day and time, as he was never served with the tenant's Application for Dispute Resolution, evidence, and Notice of Hearing (application package).

Thereafter the landlord was provided the opportunity to present his 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 his own hearing scheduled for 11:00 a.m. on December 15, 2020, and the landlord's application and notice of hearing, the tenant failed to attend the hearing.

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 his application dismissed, **without leave to reapply**.

As another procedural matter, as to the landlord's request for a monetary order, section 89(1) of the Act requires that the application for dispute resolution, which includes the notice of hearing, must be given, by personally handing the documents to the tenant or by registered mail to the tenant's address where they reside or to their forwarding address.

As the hearing documents were not served according to the requirements of section 89(1) of the Act, I dismiss the portion of the landlord's application for a monetary order for unpaid rent, **with leave to reapply**.

The hearing proceeded on the landlord's request for an order of possession of the rental unit, pursuant to section 89(2) of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent and recovery of the filing fee paid for this application?

Background and Evidence

The landlord said that the tenancy started approximately two years ago, that monthly rent is \$1,500 and that the tenant paid a security deposit of \$750. The landlord said that there was a written tenancy agreement; however, he was unable to find it for the hearing, due to renovations and construction.

The landlord also said that this was not the parties' first dispute resolution matter and that he had submitted the written tenancy agreement for those hearings.

The landlord submitted evidence that on September 25, 2020, he served the tenant with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$1,500 owed as of September 1, 2020. The effective vacancy date listed on the Notice was October 8, 2020. The Notice was filed into evidence, along with a signed, witnessed proof of service of the Notice.

The tenant did file his application to dispute the Notice, but not within the 5 days allowed, as his application was made on October 6, 2020.

The landlord submitted that since the Notice was issued to the tenant, the tenant has remained in the rental unit without making any further rent payments and owes monthly rent for the months of September, October, November, and December 2020, or \$6,000 in total.

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 he 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, it was not made within 5 days, he did not serve the landlord with his application, and he 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 landlord is 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 grant the landlord a monetary award of \$100 for recovery of the filing fee paid for their application.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act, in the amount of \$100.

In the alternative, the landlord is authorized to deduct \$100 from the tenant's security deposit to satisfy his monetary award of \$100 and in that case, the monetary order is cancelled and of no force or effect.

Conclusion

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

The landlord's application for an order of possession of the rental unit and recovery of 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: December 15, 2020

Residential Tenancy Branch