



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, FFT, CNR-MT, OPC, OPR, MNDL-S, MNRL-S, MNDCL-S,
OPR-DR, OPRM-DR

Introduction

The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (“Notice”) under section 46 of the *Residential Tenancy Act* (“Act”) and he requested more time to dispute the Notice under section 66 of the Act.

The landlords applied for an order of possession on the Notice, and on a One Month Notice to End Tenancy for Cause, under sections 46 and 47 of the Act. In addition, they applied for compensation under section 67 of the Act, and, to recover the two application filing fees under section 72 of the Act.

Only the landlords and their legal counsel attended the hearing on February 2, 2021, which was held by teleconference. The tenant did not attend the hearing.

Issues

1. Is the tenant entitled to more time to dispute the Notice?
2. Is the tenant entitled to an order canceling the Notice?
3. Are the landlords entitled to an order of possession?
4. Are the landlords entitled to compensation?
5. Are the landlords entitled to recover the filing fee?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues in these applications. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy in this dispute began on September 1, 2017, monthly rent is \$1,025.00, and the landlords are holding a security deposit of \$500.00. A copy of the written tenancy agreement was submitted into evidence.

The landlords confirmed that they served a copy of the Notice on the tenant, in-person, on November 2, 2020. A copy of the Notice along with proof of service documentation was submitted into evidence. It should be noted that the tenant applied to dispute the Notice on November 11, 2020, 4 days beyond the 5-day deadline to dispute the Notice.

The landlords testified that the tenant has not paid any rent in four months and arrears currently total \$4,100.00. They seek compensation for this amount of unpaid rent, along with the cost of the two filing fees of \$200.00.

In addition, the landlord (R.) indicated that the tenant has likely caused significant damage to the rental unit, and that the cost of repairing and making the rental unit rentable will likely be in the range of \$10,000 to \$12,000. This approximation is based on estimates, but a more accurate accounting will not be possible until after the tenant vacates the rental unit. I explained to the landlords and counsel that the landlords are at liberty to make a new application for dispute resolution claiming for any losses or costs related to the anticipated repairs. This application will need to be made within two years of the date of the tenancy ending.

Note: in reference to my discussion with counsel regarding the service of any further Notice of Dispute Resolution Proceeding and evidence on the tenant, the Director's Order to which I referred may be found at <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/temporary/ordercovid19.pdf>.

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 their case is on the person making the claim.

Tenant's Application and Landlords' Application for Order of Possession

As the tenant failed to attend the hearing – a hearing for which he was aware because he received a Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch on November 17, 2020 by way of email – he failed to prove his case. Thus, I dismiss his application without leave to reapply.

Pursuant to section 55(1) of the Act, having found that the landlords' Notice complies with section 52 of the Act, and having dismissed the tenant's application and upholding the Notice, I hereby grant to the landlords an order of possession of the rental unit.

An order of possession is issued, in conjunction with this Decision, to the landlords. The order of possession must be served on the tenant in any manner permitted under section 88 of the Act, and it will go into effect within two days of service, excluding any deemed service time under section 90 of the Act.

As I have issued an order of possession based on the Notice, I need not consider whether an order of possession is required under the One Month Notice to End Tenancy for Cause.

Claim for Unpaid Rent

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if they paid rent within five days of service.

The landlords gave evidence that the tenant has not paid any rent in four months. And, there is no evidence before me to find that the tenant had any legal right under the Act to not pay the rent.

Therefore, taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim for compensation of \$4,100.00 for unpaid rent.

Claim for Application Filing Fees

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recover the cost of the filing fee. As the landlords were successful, I grant their claim for the \$200.00 filing fees (\$100.00 for each of the landlords' two applications).

Summary of Award, Retention of Security Deposit, and Monetary Order

I award the landlords a total of \$4,300.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlords may retain the tenant’s security deposit of \$500.00 in partial satisfaction of the above-noted award.

The \$3,800.00 balance of the award is issued by way of a monetary order. This order is also issued in conjunction with this Decision to the landlords.

Conclusion

I HEREBY:

1. DISMISS the tenant’s application without leave to reapply;
2. GRANT the landlords an order of possession, which must be served on the tenant and is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia; and,
3. GRANT the landlords a monetary order in the amount of \$3,800.00, which must be served on the tenant. If the tenant fails to pay the landlords the amount owed, the landlords may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under Section 9.1(1) of the Act.

Dated: February 2, 2021

Residential Tenancy Branch