



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR
 OPR-DR, MNRL, FFL

Introduction

This hearing convened as a result of Cross Applications. In the Tenant's Application, filed on November 19, 2020, the Tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on November 18, 2020 (the "November Notice").

In the Landlords' Application for Dispute Resolution filed on December 18, 2020, the Landlords sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid rent or Utilities issued on December 3, 2020 (the "December Notice"). The Landlords also sought recovery of the \$100.00 filing fee.

The hearing of the parties' cross applications was scheduled for teleconference at 9:30 a.m. on February 11, 2021. Only the Landlords called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 9:43 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlords and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlords' hearing package. The Landlord, B.D., testified that they served the Tenant with the Notice of Hearing and the Application on December 24, 2020 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of December 29, 2020 and I proceeded with the hearing in their absence.

Preliminary Matter

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

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.

As the Tenant did not attend the hearing, and the Landlords appeared and were ready to proceed, I dismiss the Tenant's claim without leave to reapply. This includes dismissing his request that I cancel the November Notice. As such, the tenancy shall end in accordance with the Notice.

Section 55 of the *Residential Tenancy Act* provides in part as follows:

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.

I have reviewed the November Notice and confirm it complies with section 52 of the *Act*. Consequently, and as I have dismissed the Tenant's claim, the Landlords are entitled to an Order of Possession effective two days after service.

I also note that the Tenant did not apply to cancel the December Notice; consequently, and by operation of section 46(5), the Tenant is conclusively presumed to accept the end of the tenancy. As such, even in the event the Tenant's Application was not dismissed for failure to attend the hearing, the Landlords would be entitled to an Order of Possession based on the Tenant's failure to dispute the December Notice.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant?
2. Should the Landlord recover the filing fee?

Background and Evidence

This tenancy began November 1, 2020. Monthly rent was \$1,600.00. The Tenant was supposed to pay a \$800.00 security deposit and a \$800.00 pet damage deposit, but only paid \$280.00 of the deposit.

The Tenant failed to pay the full amount owing for the rent and the deposit, following which the Landlord issued the November Notice. Although the Tenant applied to dispute the November Notice, he did not call into the hearing of his Application.

B.D. testified that the Tenant also failed to pay the December rent at which time the Landlord issued the December Notice. The December Notice was sent to the Tenant by registered mail. B.D. confirmed that the Tenant failed to apply to dispute the December Notice and failed to pay the outstanding rent.

B.D. testified that the Tenant also failed to pay the January and February 2021 rent such that the sum of \$4,800.00 remains outstanding.

Analysis

Based on the Landlords' undisputed testimony and evidence and on a balance of probabilities I find as follows.

Pursuant to section 26 of the *Residential Tenancy Act*, a Tenant must pay rent when it is due in accordance with the tenancy agreement.

I find the parties entered into a month to month tenancy whereby the Tenant agreed to pay \$1,600.00 in rent. The Tenant was also obligated to pay a \$800.00 security deposit and \$800.00 pet damage deposit. I accept the Landlords' testimony that the Tenant paid the sum of \$1,880.00 such that he did not pay the full amount owing for the November rent and the deposits. I also accept the Landlords' that the Tenant failed to pay the rent owing for December 2020, January 2021 and February 2021.

I find the Landlords have established their monetary claim for unpaid rent. As the Landlords have been successful in their Application they are also entitled to recover the \$100.00 filing fee; as such, I award the Landlords monetary compensation in the amount of **\$4,900.00** for the following:

Unpaid rent for December 2020	\$1,600.00
Unpaid rent for January 2021	\$1,600.00
Unpaid rent for February 2021	\$1,600.00
Filing fee	\$100.00
TOTAL AWARDED	\$4,900.00

Conclusion

The Tenant's Application to cancel the November Notice is dismissed without leave to reapply.

The Landlords are entitled to an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenants and may be filed and enforced in the B.C. Supreme Court.

The Landlords are entitled to monetary compensation in the amount of **\$4,900.00** for unpaid rent and recovery of the filing fee. The Landlords may retain the Tenants' \$280.00 security deposit and are granted a Monetary Order for the **\$4,620.00** balance

due. The Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: February 11, 2021

Residential Tenancy Branch