



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: OPR, MNR, 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 on November 30, 2020, for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (**Notice**) issued by the landlord.

The landlord applied on January 5, 2021, for:

- an order of possession of the rental unit pursuant to the Notice served to the tenant;
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

The tenant and the landlord's agent (landlord) attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

The landlord confirmed his evidence was sent to the tenant and the tenant did not provide evidence in advance of the hearing.

Thereafter the parties were provided the opportunity to present their affirmed evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and/or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

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

Background and Evidence

The landlord submitted a written tenancy agreement showing a month-to-month tenancy start date of September 1, 2019, monthly rent of \$1,450, due on the 1st day of the month, and a security deposit of \$725 being paid by the tenant to the landlord. Filed into evidence is a copy of the written tenancy agreement.

The parties were informed the landlord would proceed first in the hearing to explain or support their Notice, as required by the Rules.

The landlord confirmed that on November 24, 2020, the tenant was served the Notice, by personal delivery, listing unpaid rent of \$1,450 owed as of November 1, 2020. The effective vacancy date listed on the Notice was December 7, 2020. Filed into evidence was a copy of the Notice.

The landlord asserted that since the issuance of the Notice, the tenant has not paid any rent and that he now owes unpaid monthly rent of \$1,450 each for November and December 2020, and January and February 2021. In total, the unpaid monthly rent is \$5,800, the amount of the landlord's monetary claim, as reflected in their monetary order worksheet filed into evidence.

Tenant's response-

In response, the tenant confirmed that he has not paid the rent listed on the Notice or any further monthly rent payments.

The tenant submitted that he lost his job due to the Covid-19 pandemic and has not been able to find another job.

The tenant said that he had a job lined up, but it fell through.

Analysis

Based on the oral and written evidence of the parties, and on the balance of probabilities, I find the following.

Landlord's application-

Order of possession of the rental unit –

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, he confirmed the landlord's evidence that he had not paid the monthly rent listed on the Notice or any monthly rent since that date. I cannot consider the personal circumstances of the tenant, only his obligations under the law.

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 fees**, are recoverable from the tenant.

Monetary order –

I also find that the landlord submitted sufficient and undisputed evidence to show that the tenant owed, but did not pay, the required monthly rent due under the written tenancy agreement, as indicated on the Notice, or any month since.

I therefore find the landlord is entitled to a monetary award of **\$5,900**, comprised of unpaid rent of \$1,450 for the months of November and December 2020 and January and February 2021, each, and the **\$100** filing fee paid by the landlord for this application.

At their request, I authorize the landlord to retain the tenant's security deposit of **\$725** in partial satisfaction of their monetary award of \$5,900.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of **\$5,175**.

Should the tenant fail to pay the landlords this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement are recoverable from the tenant.

Tenant's application-

As I have granted the landlord's application for an order of possession of the rental unit and monetary order pursuant to the landlord's Notice, I **dismiss** the tenant's application for cancellation of the Notice, **without leave to reapply**.

Conclusion

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent and the filing fee has been granted.

The tenant's application is dismissed without leave to reapply as I have granted the landlord's application in full.

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 22, 2021

Residential Tenancy Branch