



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNR
 LL: FFL, OPR-DR, OPRM-DR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Tenant’s Application for Dispute Resolution was made on December 8, 2020 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- to cancel a 10 Day Notice for Unpaid rent.

The Landlord’s Application for Dispute Resolution was made on December 15, 2020 (the “Landlord’s Application”). The Landlord initially applied through the Direct Request process; however, since the Tenant had already filed to dispute the 10 Day Notice to End Tenancy, the Landlord’s Application was scheduled to be heard with the Tenant’s Application. The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 11:00 AM on March 4, 2021 as a teleconference hearing. Only the Landlord attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 11 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only persons who had called into this teleconference.

The Landlord testified that he served his Application package and documentary evidence to the Tenant by registered mail on December 22, 2020. The Landlord submitted a copy of the registered mail receipt in support. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later.

I find the above documents were sufficiently served to the Tenant for the purposes of the Act.

Preliminary Matters

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlord and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 11:00 A.M. on March 4, 2021.

Rule 7.3 of the Rules of Procedure states that if a party 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 reapply. As either the Tenant nor a representative acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenant's Application, I therefore dismiss the Tenant's Application in its entirety without leave to reapply.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

During the hearing, the Landlord indicated that between the time of his Application made on December 15, 2020 and the hearing date, rent had not been paid for January 2021. The Landlord wished to amend his Application to include a further \$2,000.00 for unpaid rent in the month of January 2021.

According to Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"); In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the Application may be amended at the hearing. If an amendment to an Application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In light of the above, I find it is reasonable to amend the Landlord's Application to include unpaid rent for the month of January 2021 in the amount of \$2,000.00.

Furthermore, the Landlord stated that the Tenant vacated the rental unit on January 31, 2021. As such, the Landlord no longer requires an order of possession. The Landlord's claim for an Order of Possession for unpaid rent has been withdrawn. The hearing continued based on the Landlord's monetary claims.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord stated that the tenancy began on July 1, 2019. During the tenancy, the Tenant was required to pay rent in the amount of \$2,000.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,000.00 which the Landlord currently holds. The Landlord stated that the Tenant vacated the rental unit on January 31, 2021.

The Landlord testified that the Tenant failed to pay rent in full in November and December 2020. The Landlord testified that he subsequently issued a 10 Day Notice to End Tenancy for Unpaid Rent in the amount of \$2,600.00 dated December 3, 2020 (the "10 Day Notice") with an effective vacancy date of December 15, 2020. The Landlord stated that the outstanding rent relates to \$600.00 owing for November 2020 and \$2,000.00 owing for December 2020.

The Landlord stated that the Tenant paid \$500.00 toward the outstanding balance of rent, however, failed to pay any rent in the amount of \$2,000.00 in January 2021, before vacating the rental unit on January 31, 2021. The Landlord stated that the Tenant currently owes \$4,100.00 in unpaid rent. If successful, the Landlord is also seeking the return of the filing fee

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the *Act* confirms:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$4,100.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I further find it appropriate in the circumstance to order the Landlord to retain the Tenant's security deposit in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$3,200.00 which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$4,100.00
Filing fee:	\$100.00
<i>LESS security deposit:</i>	<i>-\$1,000.00</i>
TOTAL:	\$3,200.00

Conclusion

The Tenant breached the tenancy agreement by not paying rent when due.

The Landlord is granted a monetary order in the amount of \$3,200.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: March 04, 2021

Residential Tenancy Branch