



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR-MT, RP
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 February 3, 2021, for:

- an order cancelling the 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 requiring the landlord to make repairs to the rental unit.

The landlord applied on February 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 attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

The tenant confirmed receiving the landlord's evidence and the tenant confirmed that her only evidence was a copy of the Notice, which was also included in the landlord's evidence.

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.

Preliminary and Procedural Matters-

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

Additionally, Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the Notice. I informed the parties of this decision in the hearing.

A determination on the other requests of the tenant will be addressed within 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 tenancy start date of November 1, 2020, monthly rent of \$1,200, due on the 1st day of the month, and a security deposit of \$600 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 said that on January 14, 2021, he served the Notice to the tenant, by personal delivery, listing unpaid rent of \$1,200 owed as of January 1, 2021. The effective vacancy date listed on the Notice was January 25, 2021. Filed into evidence was a copy of the Notice.

The landlord asserted that since the issuance of the Notice, the tenant did not pay the January 2021 rent or half of the February 2021 rent, although he has received the monthly rent for March, April, and May 2021. In total, the unpaid and outstanding monthly rent is \$1,800, the amount of the landlord's monetary claim, as reflected in their monetary order worksheet filed into evidence.

The landlord request the order of possession of the rental unit due to unpaid monthly rent and a monetary order for monthly rent owed, but not paid, of \$1,800.

Tenant's response-

In response, the tenant confirmed that she did not pay the rent listed on the Notice or for half the month of February 2021.

The tenant submitted that she has had issues with employment insurance and getting payments made on a regular basis, although she is back on track now.

The tenant submitted that she has tried to work out a payment plan with the landlord and he has refused.

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 is the case here.

The Notice informed the tenant that she 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 listed within five days of service. Further, the undisputed evidence is that the tenant paid only a half month's rent for February 2021.

While the tenant filed an application for dispute resolution in dispute of the Notice, she had only 5 days after service of the Notice to do so. In this case, the tenant confirmed receiving the Notice on January 14, 2021, and her application was not made until February 3, 2021, outside the 5 day time frame expiring on January 19, 2021. Further, the tenant confirmed not paying the monthly rent for January or for the full month of February 2021.

Therefore, pursuant to sections 26 and 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 at 1:00 P.M. on May 15, 2021**, after service of the order upon the tenant. I note that this was the date the landlord agreed to at the hearing.

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 the full monthly rent owed for February 2021.

I therefore find the landlord is entitled to a monetary award of **\$1,900**, comprised of unpaid rent of \$1,200 for January 2021, \$600 for February 2021, and the **\$100** filing fee paid by the landlord for this application.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act in the amount of **\$1,900**.

Should the tenant fail to pay the landlord 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**.

As the tenancy is ending, I likewise dismiss the tenant's request for an order requiring the landlord to make repairs to the rental unit, **without leave to reapply**.

It was not necessary to consider the tenant's request for an order extending the time to file an application disputing the Notice issued by the landlord, as the hearing proceeded on the landlord's application, where consideration of the Notice was addressed.

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: May 3, 2021

Residential Tenancy Branch