



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, PSF, LRE, CNC, OLC, FFT
OPC, MNRL-S, FFL

Introduction

This hearing convened as a result of Cross Applications. In the Tenant's Application for Dispute Resolution, filed on April 8, 2021, they sought the following relief:

- an order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on April 7, 2021 (the "10 Day Notice");
- an order canceling a 1 Month Notice to End Tenancy for Cause issued on March 30, 2021 (the "1 Month Notice");
- an Order that the Landlord
 - comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement;
 - provide services or facilities required by law; and,
 - be restricted from entering the rental unit; and,
- recovery of the filing fee.

In the Landlords' Application for Dispute Resolution, filed on April 13, 2021, they sought an Order of Possession based on the 1 Month Notice, Monetary Compensation for Unpaid Rent, and recovery of the filing fee.

The hearing of the cross applications was scheduled for 9:30 a.m. Only the Landlord, A.F., and his legal representative, A.C., called into the hearing. The Tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:57 a.m. 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 Landlord and I were the only ones who had called into this teleconference.

The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

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

Preliminary Matter-Consequence of Tenant not Calling into Hearing

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 Landlord appeared and was ready to proceed, I dismiss the Tenant's entire claim without leave to reapply.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to monetary compensation from the Tenant for unpaid rent?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that this one year fixed term tenancy began October 26, 2020. Monthly rent was \$2,700.00 and the Tenant paid a \$1,350.00 security deposit and \$1,350.00 pet damage deposit.

The Landlord stated that the Tenant was late paying rent January, February, March and April, 2021, following which the Landlord issued 10 Day Notices to End Tenancy for Unpaid Rent or Utilities pursuant to section 46 of the *Act*. After the third late payment the Landlord issued the 1 Month Notice citing the Tenant's repeated late payment of rent as a reason for ending the tenancy.

The Landlord testified that on April 7, 2021, the 10 Day Notice was posted to the rental unit door. Although the Tenant applied to dispute the Notice, the Tenant failed to call into the hearing before me.

The Landlord confirmed that as of the date of the hearing the Tenant was in arrears of rent in the amount of \$5,400.00 for April and May 2021.

Analysis

As previously noted, I have dismissed the Tenant's entire claim without leave to reapply; this includes dismissing the claim canceling the 10 Day Notice and the 1 Month 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 Notices and find they comply with section 52 of the *Act*. Consequently, and as I have dismissed the Tenant's claims, the Landlord is entitled to an Order of Possession effective two days after service on the Tenant.

I find, based on the Landlord's testimony and the documentary evidence before me that the Tenant was obligated to pay \$2,700.00 per month in rent. Section 26 of the *Act* requires a Tenant to pay rent when rent is due. I accept the Landlord's testimony and evidence and find that the Tenant breached the tenancy agreement and the *Act* by failing to pay the April and May rent. I therefore find the Landlord has met the burden of proving their entitlement to \$5,400.00 for unpaid rent.

As the Landlord has been successful in this Application, I award the Landlord recovery of the filing fee for a total award of **\$5,500.00**.

The Landlord indicated that he wished to receive a monetary order for the **\$5,500.00** owing rather than apply the Tenants' deposits to this amount. I therefore grant him a monetary order in the amount of **\$5,500.00** this order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court.

The Landlord is at liberty to apply for further monetary compensation. The Landlord's request to retain the Tenant's security deposit is dismissed with leave to reapply.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

The Landlord is granted an Order of Possession and is entitled to a Monetary Order in the amount of **\$5,500.00** including unpaid rent for April and May 2021 and recovery of the filing fee.

The Landlord's request to retain the Tenant's security deposit is dismissed with leave to reapply. The Landlord is at liberty to reapply for further monetary compensation from the Tenant.

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 12, 2021

Residential Tenancy Branch