



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, OLC, MNDCT / MNRL-S, MNDCL-S, OPR, FFL

Introduction

On February 12, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to cancel a 10-day Notice to End Tenancy for Unpaid Rent, to order the Landlord to comply with the Act and to request a Monetary Order for compensation.

On February 21, 2021, the Landlord submitted an Application for Dispute Resolution under the Act. The Landlord requested an Order of Possession for the rental unit, a Monetary Order to recover unpaid rent and damages, and to be compensated for the cost of the filing fee. The Landlord’s Application was crossed with the Tenant’s Application and the matter was set for a participatory hearing via conference call.

Preliminary Matter- Service of Notice of Dispute Resolution Proceeding and Dismissal of the Tenant’s Application for Dispute Resolution

The Landlord attended the conference call hearing; however, the Tenant did not attend at any time during the 29-minute hearing. The Landlord testified that he sent the Notice of Dispute Resolution Proceeding to the Tenant by registered mail on March 5, 2021. The Landlord provided the tracking number for the registered mail and, according to the Canada Post website, the Notice of Dispute Resolution Proceeding package was delivered to the Tenant on March 8, 2021. I find that the Tenant is deemed to have received the Landlord’s Notice of Dispute Resolution Proceeding on March 10, 2021, in accordance with Sections 89 and 90 of the Act.

According to the Residential Tenancy Branch records, the Tenant picked up his copy of the Notice of a Dispute Resolution Proceeding from the Residential Tenancy Branch on February 23, 2021. The Landlord testified that he did not receive a Notice of Dispute Resolution Proceedings package from the Tenant. I have also found that the Landlord served the Tenant with the Landlord’s Notice of Dispute Resolution Proceeding package. Regardless of the Tenant being advised of this hearing, the Tenant did not

attend today's teleconference hearing and the Landlord indicated that he was ready to proceed.

Rule 7.3 of the *Residential Tenancy Rules of Procedure* states if a party or their agent fails to attend a 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.

After keeping the phone line open for 10 minutes, I dismissed the Tenant's Application without leave to reapply as the Tenant failed to attend the hearing to present the merits of their Application or, at the very least, cancel their scheduled hearing in advance of the hearing.

The Landlord was provided the opportunity to present their affirmed testimony and documentary evidence in regard to their Application.

Preliminary Matter – Severing of Issue

In his Application for Dispute Resolution, the Landlord included a claim for damages in relation to the end of the tenancy. This issue was determined as not related to the main issues in the dispute and was severed as per *Rules of Procedure 2.3 - Related Issues*.

Issues to be Decided

Should the Landlord receive an Order of Possession, in accordance with section 55 of the Act?

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

The Landlord provided the following undisputed terms of the tenancy:

The six-month, fixed-term tenancy began on March 1, 2020 and continued as a month-to-month tenancy. The rent is \$1,300.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$650.00.

The Landlord testified that the Tenant failed to pay the full rent in January 2021 and did not pay any rent on February 1, 2021. The Landlord subsequently served a 10 Day

Notice to End Tenancy for Unpaid Rent, dated February 3, 2021 (the “10 Day Notice”) to the Tenant by placing it in the Tenant’s mailbox. The Landlord submitted a copy of the 10 Day Notice and rent receipts and testified that the Tenant has not paid rent in March, April or May 2021 and is still occupying the rental unit.

The Landlord is requesting an Order of Possession and a Monetary Order in the amount of \$6000.00, the total of rental arrears.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The Landlord testified, and provided undisputed documentary evidence to support their submission, that the Tenant did not pay rent when it was due and is in arrears for the amount claimed. I note that there is no evidence before me that the Tenant had a right under the Act to not pay the rent.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving their claim for compensation in the amount of \$6000.00.

Section 46 of the Act authorizes a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Based on undisputed evidence, I find that the Tenant received the 10 Day Notice on February 6, 2021 and continued to occupy the rental unit without paying rent.

Section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a Notice to End Tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is

dismissed and the landlord has issued a Notice to End Tenancy that is compliant with the Act.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form. I find the 10 Day Notice, issued by the Landlord on February 3, 2021, complies with the requirements set out in Section 52.

I have dismissed the Tenant's Application and found that the 10 Day Notice is compliant with the Act. For these reasons and because the Tenant is still occupying the rental unit, I grant the Landlord an Order of Possession.

I find that the Landlord's Application has merit and that the Landlord is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenant's security deposit in the amount of \$650.00, in partial satisfaction of the monetary claim.

Item	Amount
Unpaid Rent: January 2021-May 2021	\$6,000.00
Recovery of Filing Fee for this Application	100.00
Less Security Deposit	-650.00
Total Monetary Order	\$5,450.00

A total monetary order, which is issued in conjunction with this Decision, is granted to the Landlord in the amount of \$5,450.00.

Conclusion

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$5,450.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 17, 2021

Residential Tenancy Branch