



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

The Tenant has made three repeat Applications for Dispute Resolution. One Application was submitted on February 23, 2021 and the other two on March 23, 2021 (the “Tenant’s Applications”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 25, 2021 (the “10 Day Notice”).

The Landlords’ Application for Dispute Resolution was made on March 9, 2021 (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

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

The Tenant and the Landlord’s Agent V.A. attended the hearing at the appointed date and time.

Preliminary Matters

At the start of the hearing, the Tenant requested an adjournment as her advocate called prior to the hearing to say that they would be unavailable to attend the hearing. The Tenant stated that she needed more time to secure a new advocate and requested to

adjourn the hearing for three months to do so. The Landlord's Agent did not consent to adjourning the hearing.

According to the Residential Tenancy Branch Rules of Procedure (the "Rule of Procedure") 7.9, without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

In this case, I find that the Tenant provided insufficient evidence to demonstrate that she had an advocate that intended to appear on her behalf. The Tenant did not provide a reason why her advocate was unable to attend the hearing. Furthermore, the Landlords have applied for an order of possession relating to unpaid rent. I find that by permitting an adjournment to provide the Tenant with more time to secure a new advocate would be a prejudice to the Landlords as they are likely to suffer financial loss as a result of the requested delay.

In accordance with the Rules of Procedure 7.11, I find that the Tenant's request for an adjournment is not granted and the hearing will proceed as scheduled.

The parties were given the 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.

At the start of the hearing, the Tenant stated that she did not serve the Landlords with the Notice of Hearing, nor did the Tenant served the Landlords with a copy of her documentary evidence prior to the hearing. As such, I find that the Tenant's documentary evidence will not be considered in this hearing.

The Landlord's Agent stated that she served the Tenant with a copy of the Landlord's Application and documentary evidence by Registered Mail. The Tenant confirmed receipt, however, stated that she retrieved it in her mailbox. I find that the Landlords' Application and documentary evidence was sufficiently served pursuant to Section 71 of the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice, pursuant to Section 46 of the *Act*?
2. If the Tenant is not successful in cancelling the 10 Day Notice, are the Landlords entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
3. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
4. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on September 1, 2020. Currently, rent in the amount of \$1,800.00 is due to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$900.00 which the Landlords continues to hold. The Landlords submitted a copy of the tenancy agreement in support.

V.A. testified the Tenant did not pay the full amount of rent when due on February 1, 2021. The parties agreed that the Tenant paid rent in the amount of \$640.00, leaving an outstanding balance of rent owed to the Landlords in the amount of \$1,160.00. V.A. stated that the Landlords subsequently served a 10 Day Notice dated February 25, 2021 with an effective date of March 13, 2021 by Registered Mail on February 25, 2021. The Landlords submitted a Registered Mail receipt in support. V.A. testified that the 10 Day Notice indicates that the Tenant failed to pay rent in the amount of \$1,160.00 to the Landlords which was due on February 1, 2021.

V.A. stated that the Tenant has not yet paid any amount towards the outstanding rent for February 2021 as indicated on the 10 Day Notice. Furthermore, V.A. stated that the

Tenant has not yet paid rent for March, April, or May 2021. V.A. stated that the Tenant currently owes the Landlords rent in the amount of \$6,560.00.

The Tenant acknowledged receipt of the 10 Day Notice, however, could not recall the exact date. The Tenant stated that she lost her job due to the Covid-19 Pandemic leaving her unable to pay rent. Furthermore, the Tenant stated that the toilet in her rental unit has not been functioning for some time. The Tenant stated that there are other issues in the tenancy, however, did not elaborate. The Tenant confirmed that she owes the Landlords rent in the amount of \$6,560.00.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Section 46 of the Act states a Landlord may 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

V.A. testified that the Landlords served the Tenant with the 10 Day Notice dated February 25, 2021 with an effective vacancy date of March 13, 2021 by Registered Mail on February 25, 2021. The Tenant confirmed having received the 10 Day Notice in her mailbox, but could not recall the exact date it was received. In accordance with Sections 88 and 90 of the Act, I find that the Tenant is deemed to have been served with the 10 Day Notice on March 2, 2021, five days after the Registered Mailing.

Accordingly, pursuant to section 46(4) of the Act, the Tenant had until March 7, 2021 to either pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution. I find that the Tenant has submitted her Application to cancel the 10 Day Notice within the appropriate timelines.

I accept that the parties agreed that the Tenant paid a portion of rent for February 2021, however, she failed to pay the remaining balance of \$1,160.00 to the Landlords on or before March 7, 2021. As such, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice.

In light of the above, I dismiss the Tenant's Applications without leave to reapply. Under section 55 of the Act, when a Tenant's Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlords are entitled to an **order of possession effective 2 (two) days**, after service on the Tenant, pursuant to section 55 of the Act. This order should be served onto the Tenant as soon as possible. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I accept that the parties agreed that in addition to the unpaid rent for February 2021 in the amount of \$1,160.00 the Tenant has also failed to pay any rent for March, April and May 2021. I find that the Tenant has breached Section 26 of the Act. I find the Landlords have established an entitlement to a monetary award for unpaid February, March, April and May 2021 rent in the amount of **\$6,560.00**. Having been successful, I also find the Landlords are entitled to recover the **\$100.00** filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlords are entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlords are entitled to a monetary order in the amount of \$5,760.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$6,560.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$900.00</i>)
TOTAL:	\$5,760.00

Conclusion

The Tenant has failed to pay rent and has breached the *Act* and the tenancy agreement. The Landlords are granted an order of possession, which will be effective two (2) days after service on the Tenant. If the Tenant fails to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$5,760.00. The monetary order 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: May 25, 2021

Residential Tenancy Branch