



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant's application *****522: CNC
Tenant's application *****599: CNR
Tenant's application *****296: CNR
Landlord's application: OPR, MNR, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (the one month Notice), pursuant to section 47 (application *****522);
- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served on May 10, 2021, pursuant to section 46 (application *****599); and
- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served on June 10, 2021 (the ten day Notice) pursuant to section 46 (application *****296).

The landlord's application pursuant to the Act is for:

- an order of possession under the ten day Notice, pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:56 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. The landlord, represented by property manager MY (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 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.

At the outset of the hearing the attending party stated he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000.”

Preliminary Issue – service of tenant’s application *****522

The landlord confirmed receipt of the notice of hearing in April 2021 and affirmed he served his response evidence by registered mail on July 06, 2021, in accordance with section 89(1)(c) of the Act (the tracking number is recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the landlord’s response evidence on July 11, 2021, in accordance with section 90 (a) of the Act.

I note that 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.

Preliminary Issue – tenant’s application *****599 dismissed without leave

The landlord stated he did not receive the notice of hearing and that he was not aware of the tenant’s application *****599.

Rules 3.1, 7.1 and 7.3 of the Rules of Procedure provide as follows:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;

[...]

Rule 7 – During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 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.

Based on the landlord's testimony, I find the tenant did not serve the notice of hearing. Accordingly, in the absence of any attendance at this hearing by the tenant, I order the tenant's application *****599 dismissed without leave to reapply.

Preliminary Issue – service of tenant's application *****296

The landlord confirmed receipt of the notice of hearing in early July 2021 and affirmed he served his response evidence by registered mail on July 07, 2021, in accordance with section 89(1)(c) of the Act (the tracking number is recorded on the cover of this decision).

Given the evidence of registered mail the tenant is deemed to have received the landlord's response evidence on July 12, 2021, in accordance with section 90 (a) of the Act.

Preliminary Issue – service of the landlord's application

I accept the landlord's testimony that the tenant was served with the notice of hearing by registered mail on July 02, 2021 and the evidence by registered mail on July 05, 2021, in accordance with section 89(2)(b) of the Act (the tracking numbers are recorded on the cover of this decision).

Given the evidence of registered mail the tenant is deemed to have received the notice of hearing on July 07, 2021 and the evidence on July 10, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Named Landlord

Property manager PY explained the landlord is PL, who is represented by Magsen Realty. I note that the tenant's applications name the landlord as Magsen Realty and the landlord's application names the landlord as PL.

Preliminary Issue – application for a monetary order for compensation under sections 26 and 67

The landlord's application for a monetary order states:

02 - I issued a 10 Day Notice to End Tenancy and I want a monetary order in addition to an order of possession for rent not paid in the required time

\$1,700.00

Applicant's dispute description

Tenant failed to pay rent in the amount \$1,450.00 Tenant failed to pay \$50.00 for two NSF in April and June, respectively.

Tenant failed to pay strata bylaw infraction fine (smoking violation - \$200.00). Tenant total owing \$1,700.00

The landlord submitted into evidence a monetary order worksheet dated June 23, 2021 indicating claims for "strata fine" and "June + NSF fees" in the total amount of \$1,700.00.

Based on the landlord's application and the monetary order worksheet, I find the landlord clearly stated in the application that he applied for a monetary order for unpaid rent (under section 26 of the Act) and for compensation for damage caused by the tenant (under section 67 of the Act).

Preliminary Issue – Amendment of the monetary claim

At the hearing the landlord sought to amend his application for \$1,500.00 in unpaid rent and the no sufficient fund fee (the NSF fee) to include an additional \$1,475.00 for the unpaid rent and NSF fee for July 2021.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent and NSF fees to \$2,975.00.

Issues to be Decided

Is the tenant entitled to:

- cancellation of the one month Notice?
- cancellation of the ten day Notice?

Is the landlord entitled to:

- an order of possession based on the one month Notice?
- an order of possession based on the ten day Notice?
- a monetary order for unpaid rent?
- a monetary order for compensation?
- an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's and tenant's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on November 01, 2020. Monthly rent is \$1,450.00, due on the first day of the month. At the outset of the tenancy the landlord collected a deposit of \$725.00 and holds it in trust. The tenancy agreement was submitted into evidence. It states:

The tenant will pay the rent of \$1,450 each 1st day of the month.

[...]

2 Rental Payment:

The Tenant may pay rent by cheque. If cheques are returned as a result of non-sufficient funds (NSF) or stop payment, the Tenant is required to pay a \$25.00 service charge per returned cheque.

[...]

8. Others

(1) Smoking and Cannabis are NOT allowed within the premises.

[...]

(11) The Tenant must fully comply with the Strata Corporation Bylaws and Rules. Failure to do so would result in fines or penalties from the Strata Corporation, and the Tenant will be responsible for the payment of such fines incurred.

The landlord stated he served the one month Notice by registered mail on March 24, 2021 (the tracking number is recorded on the cover page of this decision). The reason to end tenancy is: Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The details of the one month Notice are: "Tenant received multiple strata bylaw infractions regarding to smoking".

The one month Notice is dated March 24, 2021 and the effective date is April 30, 2021. The tenant's application to dispute the one month Notice was submitted on April 08, 2021. The landlord stated the tenant continues to occupy the rental unit.

The landlord testified the tenant has been smoking in the rental unit since November 2020. The landlord submitted into evidence an email from the rental building manager dated March 17, 2021:

Please be advised the strata has received 6 active complaints from 3 separate residents with regards to smoking of cigarette's and marijuana emanating from unit [rental unit]. The smell is entering not only the units via the outlets, bathroom and stove range vents but also the smell is strong at the common hallway directly at [rental unit] suite door. This is happening during the day and evenings at different times. As well I am starting to receive complaints of [rental unit] resident yelling within the unit with guests and yelling at people in vehicles at the cul-de-sac that she is entering.

The landlord served the tenant the warning letter dated March 18, 2021 by email. The letter states:

It has been brought to my attention that the Strata Management Company has issued multiple smoking bylaw infractions to you recently. There are currently multiple counts of complaint from residents of nearby units of smelling heavy cigarette odor from your unit.

The landlord was notified of this matter, and the landlord has instructed me to send you this letter.

Please note that smoking inside the Rental Premises is prohibited as per section 8 (1) of the addendum of the Residential Tenancy Agreement you signed on October 21, 2020. Further violation of the addendum will result in termination of the Residential Tenancy Agreement without further warning, and the Landlord will hold you responsible for rectifying the damages caused by your violation.

The landlord served the tenant with the ten day Notice by registered mail on June 03, 2021 (the tracking number is recorded on the cover page of this decision). The landlord submitted a copy of the June 03, 2021 ten day Notice into evidence. It indicates \$1,500.00 in unpaid rent due on June 01, 2021. The effective date is June 18, 2021.

The landlord testified he called the tenant on June 02, 2021 and explained to her that she did not pay the NSF fee in the amount of \$25.00 per month for April and June 2021 rent. Thus, the tenant was in rental arrears in the amount of \$1,500.00 on June 02, 2021.

The landlord said the tenant did not pay the NSF fees and June and July 2021 rent.

The landlord affirmed the tenant received a \$S200.00 strata fine and did not pay it. The landlord submitted into evidence a letter sent by the strata on June 04, 2021:

It has been reported the cigarette smell emitted is causing a nuisance to a neighbouring unit. The last reported occurrence is Monday, May 31st, 2021 during the morning. Please remind your tenants that smoking is strictly prohibited at [redacted for privacy].

Please note that it is a repeated instance where your tenants are in contravention to your strata bylaws and a \$200.00 fine has been levied to your strata lot account. Continued contravention may result in further fines levied.

The landlord submitted into evidence a ledger dated July 02, 2021 indicating the tenant did not pay the April and June NSF fees in the amount of \$25.00 per month, June and July 2021 rent in the amount of \$1,450.00 per month and the strata fine in the amount of \$200.00.

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 the case is on the person making the claim.

Order of possession based on the ten day Notice

The tenant is deemed served the ten day Notice on June 08, 2021, five days after it was mailed, in accordance with sections 88(c) and 90(a) of the Act.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

I accept the landlord's convincing uncontested testimony and the tenancy agreement that the tenant must pay monthly rent of \$1,450.00.

Based on the landlord's convincing uncontested testimony and the tenancy agreement, I find the tenant was aware that the amount of \$1,500.00 in the ten day Notice is for the NSF fee in the amount of \$25.00 per month for April and June 2021 and June 2021 rent in the amount of \$1,450.00.

Based on the landlord's convincing uncontested testimony, the June 23, 2021 monetary order worksheet and the July 02, 2021 ledger, I find the tenant did not pay June and July 2021 rent.

I find the ten day Notice is in accordance with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the effective date and is in the approved form.

As such, pursuant to section 55(1) of the Act, I dismiss the tenant's application for cancellation of the ten day Notice and grant an order of possession to the landlord effective two days after service of this order on the tenant.

I make no findings regarding the one month Notice, as the landlord was awarded an order of possession based on the ten day Notice.

Monetary order for unpaid rent and NSF fees

Residential Tenancy Regulation 7 states:

- (1) A landlord may charge any of the following non-refundable fees:
[...]
(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
- (2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Based on the landlord's convincing uncontested testimony, the June 23, 2021 monetary order worksheet and the July 02, 2021 ledger, I find the tenant owes the landlord \$2,900.00 for June and July 2021 rent and \$75.00 for April, June and July 2021 NSF fees.

Strata fine

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I accept the landlord's convincing uncontested testimony, the June 23, 2021 monetary order worksheet and the strata letter that the tenant received a strata fine in the amount of \$200.00 and did not pay it.

I find the tenant breached section 8(11) of the tenancy agreement addendum by not paying the strata fine and the landlord incurred a loss of \$200.00.

As such, I award the landlord \$200.00 in compensation for this loss.

Filing fee and summary

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$725.00 deposit.

In summary:

Item	Amount \$
April, June and July 2021 NSF (\$25.00 per month)	75.00
June and July 2021 rent (\$1,450.00 per month)	2,900.00
Strata fine	200.00
Filing fee	100.00
Sub-total	3,275.00
Minus deposit	725.00 (subtract)
Total	2,550.00

Conclusion

Pursuant to section 55(1) of the Act, I grant an order of possession to the landlord effective two days after service of this order 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 sections 26, 67 and 72 of the Act, I authorize the landlord to retain the \$725.00 deposit and grant the landlord a monetary order in the amount of \$2,550.00.

The landlord is provided with this order in the above terms and the tenant must be served with this order. Should the tenant fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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: August 09, 2021

Residential Tenancy Branch