



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Community Legal Assistance
Society and [tenant name suppressed to protect privacy]

CORRECTED DECISION

Dispute Codes

For the tenant: CNR, LRE
For the landlord: OPR-DR

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 for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord; and
- an order suspending or setting conditions on the landlord's right to enter the rental unit.

The landlord applied for:

- an order of possession of the rental unit pursuant to the Notice served to the tenant.

The landlord, the landlord's agent and the landlord's legal counsel (counsel) attended the hearing; the tenant did not attend.

The landlord submitted documentary evidence showing, and counsel submitted, that the tenant was served with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by personal service by way of a process server. The service date was August 10, 2021, as the tenant had avoided service of the hearing documents up to that time.

Based upon the landlord's oral and written submissions, I accept the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act, and the hearing proceeded on the landlord's application in the tenant's absence.

Thereafter the landlord, agent and counsel were provided the opportunity to present their evidence and submissions orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matter #1 –

Despite having their own hearing scheduled for 11:00 a.m. on September 14, 2021, and the landlord's application and notice of hearing, the tenant failed to attend the hearing.

Rules 7.3 and 7.4 of the Rules of Procedure provides as follows:

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.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, **in the absence of any evidence or submissions from the tenant at the hearing, I order their application dismissed, without leave to reapply.**

#2 –

Counsel submitted that the tenant listed in the tenant's application, CLAS, was not the tenant and that CLAS informed counsel that they do not represent the tenant in this matter.

I found it necessary and appropriate to exclude the name of the listed applicant in the tenant's application and amend the application showing JJ only as the tenant/applicant. I have excluded CLAS from further consideration in this matter.

The landlord and landlord's agent confirmed that they were not recording the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord submitted that this tenancy began with another tenant on or about September 1, 2019. During the course of the tenancy, the original tenant vacated, leaving this tenant living in the rental unit. The landlord submitted that they accepted several monthly rent payments from the tenant before realizing that the original tenant had vacated. The monthly rent is \$1,450, due on the first day of the month.

The landlords submitted evidence that on May 4, 2021, they served the tenant with the Notice, by attaching it to the tenant's door, listing a total unpaid rent of \$3,550 owed as of May 1, 2021. The effective vacancy date listed on the Notice was May 14, 2021. The Notice was filed into evidence.

The tenant did file their application to dispute the Notice within the 5 days allowed, as their application was made on May 6, 2021.

The landlord submitted that the tenant had been on a payment plan for affected monthly rent incurred during the "specified period" between March 18, 2020 and August 17, 2020 during the emergency period beginning on March 18, 2020, but failed to make all the payments.

The landlord submitted that since the Notice was issued to the tenant, the tenant has failed to pay the rent payments and owes a total of \$9,600 in unpaid monthly rent, as of the day of the hearing.

Analysis

Order of Possession –

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 was the case here.

The Notice informed the tenant that they 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 within five days of service.

While the tenant filed an application for dispute resolution in dispute of the Notice, they did not attend the hearing to offer rebuttal evidence to prove the rent was paid.

Therefore, pursuant to section 55(1) of the Act, I find that the landlord is entitled to and I grant an order of possession for the rental unit effective 2 days after service of the order upon the tenant.

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 costs** and filing fees, are recoverable from the tenant.

Monetary Order –

I find that the landlord submitted sufficient, undisputed evidence to show that the tenant owes an outstanding balance of \$9,600 in unpaid monthly rent, through the date of the hearing.

Section 55(1.1) of the Act applies and states:

55(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, **the director must grant an order requiring the payment of the unpaid rent.**

[Emphasis added]

Pursuant to section 55(1.1) of the Act, I grant the landlord **\$9,600** for unpaid rent through September 2021.

As a result, I grant the landlord a final, legally binding monetary order for the amount of their monetary award of \$9,600.

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.

Conclusion

The tenant's application is dismissed without leave to reapply as they failed to attend the hearing.

The landlord's application for an order of possession of the rental unit has been granted.

The landlord is granted a monetary order in the amount of **\$9,600** comprised of unpaid monthly rent owed by 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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

~~Dated: September 14, 2021~~

Dated: September 17, 2021 (Correction)

Residential Tenancy Branch