



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR, FF
For the landlord: OPR, MNR, FF

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 on June 18, 2021, for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord; and
- to recover the cost of the filing fee.

The landlord applied on July 2, 2021, for:

- an order of possession of the rental unit pursuant to the Notice served to the tenant;
- a monetary order for unpaid rent and unpaid utility charges; and
- to recover the cost of the filing fee.

The tenant and the landlord attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to Rule 6.11.

The parties confirmed receiving the other's application and evidence.

Thereafter the parties were provided the opportunity to present their affirmed evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

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

Preliminary and Procedural Matters-

The tenant confirmed that he vacated the rental unit on or about July 15, 2021. As a result, the tenant was informed that it was no longer necessary to consider his application, as the issue contained therein was now moot, as the tenancy is over.

Likewise, it was no longer necessary to consider the landlord's request for an order of possession, as the tenancy has ended.

The hearing proceeded on the landlord's monetary claim.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant and to recovery of the filing fee paid for this application?

Background and Evidence

The parties submitted a written tenancy agreement showing a tenancy start date of March 1, 2021, monthly rent of \$1,400, due on the 1st day of the month, and a security deposit of \$700 being paid by the tenant to the landlord.

The landlord submitted that on June 15, 2021, the tenant was served the Notice, by attaching it to the tenant's door, listing unpaid rent of \$1,400 owed as of June 1, 2021. The effective vacancy date listed on the Notice was June 25, 2021. Filed into evidence was a copy of the Notice.

The landlord asserted that since the issuance of the Notice, the tenant did not pay the June 2021 rent listed on the Notice, nor did he pay the monthly rent for July 2021, prior to moving out sometime in July 2021. The landlord submitted that the tenant owes an outstanding rent deficiency of \$2,800.

In addition, the landlord submitted that the tenant owes unpaid utility charges in the amount of \$203.51 for electricity and \$72.72 for natural gas. The landlord said that the written tenancy agreement provides that the tenant is obligated to pay 1/3 of the utility charges. Filed in evidence was a copy of the utility bills for the appropriate time period.

The landlord's total monetary claim is \$3,076.23, comprised of the unpaid monthly rent for June and July 2021, and unpaid utility charges of \$203.51 for electricity and \$72.72 for natural gas, as reflected in their monetary order worksheet filed into evidence.

Tenant's response-

In response, the tenant confirmed that he has not paid the rent listed on the Notice or any further monthly rent payments. The tenant said he vacated the rental unit as it was uninhabitable and unsafe to live there. The tenant cited mold, a mouse infestation, and lack of heating among the reasons he vacated.

The tenant asserted that he should not have to pay for a place that was unsafe to live in. The tenant referred to his photographic evidence.

The tenant submitted that he gave the landlord plenty of notice to make the repairs, yet he refused.

The tenant said that he had not paid the unpaid utility charges, as he had not been given a bill for those charges at the time he vacated.

The landlord said he waited for the bills to come in before submitting them to the tenant.

The landlord also said he did not want to apply the tenant's security deposit toward a monetary award.

Analysis

Based on the oral and written evidence of the parties, and on the balance of probabilities, I find the following.

Landlord's application-

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 he had five days of receipt of the Notice to file an application for dispute resolution 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, he confirmed the landlord's evidence that he had not paid the monthly rent listed on the Notice or any monthly rent thereafter. Although the tenant said he had reason not to pay the rent, his remedy would be to pay the monthly rent due under the tenancy agreement and file for dispute resolution to have any issues addressed.

I therefore find that the landlord submitted sufficient and undisputed evidence to show that the tenant owed, but did not pay, the required monthly rent due under the written tenancy agreement, as indicated on the Notice, or any month he remained in the rental unit, in this case, until July 2021. I therefore find he is entitled to a monetary award of \$2,800, comprised of the monthly rent of \$1,400 for June and \$1,400 for July 2021.

The tenant also confirmed not paying the unpaid utility charges, as he had not been presented a bill for the same prior to vacating.

In this case, I find the landlord submitted sufficient evidence to show that the tenant owed 1/3 of the monthly utility charges under the terms of the written tenancy agreement. I therefore find the landlord has established a monetary claim of \$203.51 for electricity and \$72.72 for natural gas.

I grant the landlord recovery of his filing fee of \$100.

I therefore find the landlord is entitled to a monetary award of \$3,176.23, comprised of unpaid rent of \$1,400 for the months of June and July 2021, each, unpaid utility charges of \$203.51 for electricity and \$72.72 for natural gas and the \$100 filing fee paid by the landlord for this application.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$3,176.23.

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.

Tenant's application-

As the tenancy ended prior to the hearing, I dismiss the tenant's application seeking cancellation of the Notice, without leave to reapply, including the request to recover the filing fee.

Conclusion

The landlord's application for a monetary order for unpaid rent, unpaid utility charges, and the filing fee has been granted.

The tenant's application is dismissed without leave to reapply as the tenancy ended prior to the hearing and the matter is now moot.

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: October 19, 2021

Residential Tenancy Branch