



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNC, FFT
For the landlord: OPR, MNRL, FFL

Introduction

The tenant filed an Application for Dispute Resolution (the “tenant’s Application”) on July 23, 2021 seeking an order to cancel the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued by the landlord on July 17, 2021. They also sought recompense for the filing fee.

The landlord then filed an Application for Dispute Resolution (the “landlord Application”) on October 15, 2021. This was for an order of possession of the rental unit pursuant to a 10-Day Notice to End Tenancy (the “10-Day Notice”) issued on September 28, 2021. Additionally, they seek compensation for rent amounts owing, and recompense of the filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on November 22, 2021. Both parties attended the conference call hearing to speak to the issues at hand.

Preliminary Matter

At the outset of the hearing, the tenant stated they left the rental unit in October 2021. When questioned, they provided their move-out date was October 21, and they left the keys in the rental unit. The landlord did not have this information prior to the start of the hearing.

Given that the tenancy has ended, the tenant's claim for a cancellation of a previous notice to end tenancy is dismissed, without leave to reapply. Because they did not withdraw their Application and did not advise the landlord of this, I make no award for the filing fee.

I grant the landlord an Order of Possession as a measure of surety in this situation. They were not advised of the tenant's move-out. In the hearing, the tenant provided a forwarding address to the landlord and that landlord made note of that address. Further, the tenant granted their consent to the landlord to enter the rental unit immediately.

I have reviewed the 10-Day Notice issued by the landlord on September 28, 2021. I find it complies with the requirements of s. 52 of the *Act*.

The *Act* s. 55(1.1) provides for an order requiring the payment of unpaid rent. This is the case where I have dismissed the tenant's Application and find the 10-Day Notice complies with s. 52 requirements. The landlord provided that the monthly rent amount was \$2,500 per month, and this was not disputed by the tenant in the hearing. I find the tenant was not sure on their final move-out date, and the October 21 date they provided was a loose estimation of when that move-out day was. I find the tenant overheld through October; therefore, I find the end-of-tenancy date is October 31, 2021. They are obligated to pay the full amount of that month's rent to the landlord. I grant the landlord an order for payment of \$7,500, for the August, September, and October 2021 rent.

The landlord issued the 10-Day Notice on September 28, 2021 for the \$5,000 rent amount that was owing on September 1, 2021. The tenant in the hearing provided that they stayed in the rental unit until October 21, 2021. I made the above order for \$7,500 on the basis of the final date of the tenancy. The landlord listed November 2021 as unpaid rent. To be clear, there is no authority to make an award for that amount in this situation, existing as it does after the end of the tenancy. I make no award for the November 2021 rent amount to the landlord where they have not shown precisely how they are eligible for this amount. The landlord may file a separate Application for that extra amount that they listed.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. I granted an award of \$7,500. After setting off the security deposit, there is a balance of \$6,250. I am authorizing the landlord to keep the security

deposit and award the balance of \$6,250 as compensation for the August through October 2021 rent amounts.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the landlord was successful in their claim, I find they are entitled to recover the filing fee from the tenants.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenants fail to comply with this Order, the landlord may file this Order in the Supreme Court of British Columbia, where it will be enforced as an order of that court.

Pursuant to sections 55(1.1) and 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$6,350 for unpaid rent and a recovery of the filing fee for this hearing application. The landlords are provided with this Order in the above terms and the tenants must be served with **this Order** as soon as possible. Should the tenants 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 s. 9.1(1) of the *Act*.

Dated: November 22, 2021

Residential Tenancy Branch